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## DOMESTIC RELATIONS

### *Adoption: Make Technical Corrections to Adoption Code*

CODE SECTIONS: O.C.G.A. §§ 19-8-5 to -7 (amended), 19-8-13, -14, -16, -20, -23 to -25 (amended), 49-5-12 (amended)

BILL NUMBER: HB 604

ACT NUMBER: 541

SUMMARY: The Act clarifies provisions of the Adoption Code, corrects syntactical and grammatical errors, and corrects portions of the revised Code which proved to be costly or unworkable. It specifies that the petitioner will pay for criminal record checks, and allows reunion registry activities to be handled by independent agencies on a fee basis. It modifies the Code to allow "networking letters" seeking independent adoptions to contain an attorney's name and address as a contact.

EFFECTIVE DATE: April 17, 1991

### *History*

The Adoption Act of 1990,<sup>1</sup> which became effective on July 1, 1990,<sup>2</sup> completely revised Georgia's Adoption Code.<sup>3</sup> Although the Adoption Code, found in Georgia Code chapter 19-8, was substantially revised in

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1. 1990 Ga. Laws 1572 (formerly found at O.C.G.A. §§ 19-8-1 to -26 (Supp. 1990)).

2. James B. Outman, *Adoption Act of 1990*, FAMILY LAW SECTION NEWSLETTER, (State Bar of Georgia), June 20, 1990, at 1 (available in the Georgia State University College of Law Library) [hereinafter FAMILY LAW NEWSLETTER]. James B. Outman, the principal author of the Adoption Act of 1990, received his law degree from the Georgetown University Law Center, is a member of the Georgia Bar, and was in private law practice from 1971 to 1979. *Id.* He is currently Director of Quality Assurance for Georgia-Pacific Corporation's Chemical Division. *Id.* Mr. Outman was also the principal author of the Adoption Act of 1977. *Id.*

3. Interview with James B. Outman, in Atlanta (Apr. 15, 1991) [hereinafter Outman Interview].

1977,<sup>4</sup> there was no attempt to restructure the Adoption Code at that time.<sup>5</sup> Thus, before the Adoption Act of 1990, the Adoption Code remained essentially the way it was written in 1941.<sup>6</sup> The result of more than two years of work by a committee of attorneys and other professionals,<sup>7</sup> the Adoption Act of 1990 was “primarily an editorial revision of the adoption statutes designed to make them more ‘user friendly.’”<sup>8</sup>

Specifically, the requirements for the surrender or termination of parental rights for each type of adoption — agency, independent, stepparent, relative, and domestication of a foreign decree — are now detailed in separate Code sections.<sup>9</sup> Code section 19-8-13, which specifies the requirements for a petition for adoption, contains, in separate subsections, the specific requirements for each type of adoption.<sup>10</sup> Further, Code section 19-8-26 includes specific forms for each type of adoption.<sup>11</sup>

In addition to the structural changes, the Adoption Act of 1990 contained substantive changes “to assure compliance with existing law and to improve the adoption process in Georgia.”<sup>12</sup> Specific cross-references to the Interstate Compact on the Placement of Children (ICPC) were included.<sup>13</sup> References to the ICPC in various sections of the Adoption Code serve as a reminder that failure to comply with the

4. At that time, the Code was modified to deal with the rights of the biological father who was not the legal father of a child placed for adoption. James B. Outman, Summary of Committee Substitute to Senate Bill 443, A-1 (available in the Georgia State University College of Law Library) [hereinafter Summary of SB 443]. SB 443 was the bill which contained the Adoption Act of 1990. Outman Interview, *supra* note 3.

5. Outman Interview, *supra* note 3.

6. *Id.*

7. FAMILY LAW NEWSLETTER, *supra* note 2, at 1.

8. Summary of SB 443, *supra* note 4, at A-1.

9. *Id.* O.C.G.A. § 19-8-4 provides the requirements for agency adoptions; § 19-8-5, independent adoptions; § 19-8-6, stepparent adoptions; § 19-8-7, relative adoptions; and § 19-8-8, domestication of a foreign decree. FAMILY LAW NEWSLETTER, *supra* note 2, at 2; O.C.G.A. §§ 19-8-4 to -8 (1991).

10. *See* O.C.G.A. § 19-8-13(a)(2) — (6) (1991).

11. O.C.G.A. § 19-8-26(a) and (b) provide forms for agency adoptions under § 19-8-4. Section 19-8-26(c) and (d) provide forms for independent adoptions under § 19-8-5. Section 19-8-26(e) and (f) provide forms for stepparent or relative adoptions under §§ 19-8-6 and -7. O.C.G.A. § 19-8-26 (1991).

12. Summary of SB 443, *supra* note 4, at A-1.

13. *See, eg.*, O.C.G.A. §§ 19-8-4(j), 19-8-5(l), 19-8-13(a)(2)(C) (1991). The ICPC was passed by the Georgia General Assembly in 1977, and is incorporated in Code chapter 39-4. FAMILY LAW NEWSLETTER, *supra* note 2, at 3. Since the ICPC has been adopted by all 50 states, the District of Columbia, and the U.S. Virgin Islands, its provisions must be followed before a child born in any other state can be brought to Georgia for adoption. *Id.* Failure to comply with the provisions of the ICPC could render an adoption voidable. *Id.* However, since the ICPC was adopted by the Georgia General Assembly at the same time as the Adoption Act of 1977, no mention of the ICPC was made in the Adoption Act of 1977, and the Adoption Code had not been amended to include the appropriate cross-references. *Id.*

ICPC requirements located in a different section of the Code could jeopardize an otherwise valid adoption.<sup>14</sup> In response to the Georgia Supreme Court ruling in *Thorne v. Padgett*,<sup>15</sup> section 19-8-10(b) was modified to add the standard “without justifiable cause,” thereby assuring the due process rights of the nonpaying parent.<sup>16</sup>

The revised definitions section of the Adoption Code contains definitions of the terms “biological father” and “legal father.”<sup>17</sup> These definitions and the use of the appropriate term throughout the Adoption Code should eliminate the confusion which previously existed when addressing the rights of the child’s “father.”<sup>18</sup> Further, a more comprehensive affidavit from the biological mother is included to help ensure that the rights of the father are properly addressed.<sup>19</sup>

The revised Adoption Code requires filing, with the adoption petition, “a completed form containing background information regarding the child to be adopted.”<sup>20</sup> The Department of Human Resources (DHR) has prepared background information forms to be used for all adoptions.<sup>21</sup> Although the previous Adoption Code required an investigation by the DHR to verify all allegations in the adoption petition,<sup>22</sup> the revised Code specifically includes “a criminal records check of each petitioner.”<sup>23</sup>

The Adoption Act of 1990 also provided that where the parental rights of one parent have been voluntarily surrendered or judicially terminated, the DHR or child-placing agency may, in contemplation of

14. Summary of SB 443, *supra* note 4, at A-1.

15. 386 S.E.2d 155 (Ga. 1989). In *Thorne*, Johnnie Thorne filed objections to a petition by David Padgett, the new husband of Thorne’s former wife, to adopt the minor child of Thorne and his former wife. *Id.* Thorne was serving a 15 year prison sentence at the time. *Id.* Because Thorne had failed to provide support for the child for a period of one year prior to the petition, the trial court, relying on O.C.G.A. § 19-8-6(b), granted the adoption petition. *Id.* The Georgia Court of Appeals affirmed the trial court. *Id.* The Georgia Supreme Court, however, reversed the ruling, finding that Thorne’s constitutional right to due process had been violated because the Code did not require a showing, by clear and convincing evidence, that Thorne was an unfit parent. *Id.* at 651, 652. An earlier version of the Code had required a showing that the failure to provide support had been “without justifiable cause.” *Id.* at 651. The court felt that such a showing was necessary to meet the due process burden. *Id.*

16. FAMILY LAW NEWSLETTER, *supra* note 2, at 6.

17. O.C.G.A. § 19-8-1(1), (6) (1991).

18. FAMILY LAW NEWSLETTER, *supra* note 2, at 1.

19. *Id.* at 2; *see also* O.C.G.A. § 19-8-26(h) (1991).

20. O.C.G.A. § 19-8-13(a)(2)(D), (3)(H), (4)(G), (5)(F) (1991).

21. FAMILY LAW NEWSLETTER, *supra* note 2, at 3-4. Form 413, which is used for non-state agency adoptions is similar to form 412, used for agency adoptions. Letter from James B. Outman to Robert Anderson, Executive Legislation Editor, Georgia State University Law Review, Aug. 26, 1991 (available in the Georgia State University College of Law Library) [hereinafter Outman Letter]. Background information was formerly collected only for agency adoptions. *Id.*

22. 1977 Ga. Laws 201 (formerly found at O.C.G.A. § 19-8-11 (1982)).

23. O.C.G.A. § 19-8-16(a) (1991).

adoption, petition a superior court to terminate the parental rights of the other parent if the child has been abandoned by the parent, the parent cannot be found, or the parent is insane.<sup>24</sup> The new provisions allowing judicial termination of parental rights should allow for earlier placement of the child in a permanent home.<sup>25</sup>

Finally, the Adoption Act of 1990, while continuing to require that adoption records be sealed, made provision for communications between the birth parents and the adoptive parents or the adoptee.<sup>26</sup> If the adopted child is less than eighteen years old, the Adoption Code requires that the DHR notify the adoptive parents if anyone seeks access to the sealed records.<sup>27</sup> The Code also allows adoptive parents to keep the DHR apprised of their current mailing address to facilitate such notification.<sup>28</sup>

However, the DHR may now access the sealed records to add or release medical information.<sup>29</sup> If an adopted child who is over twenty-one years old submits a written request, the DHR is now required to release nonidentifying information about that child's biological parents.<sup>30</sup> The name of the biological parent may be released to the adopted child if the biological parent has submitted written permission to the DHR.<sup>31</sup> Further, if the biological parent has not submitted written permission for release of that parent's name, the DHR is required to "make diligent effort" to notify the biological parent of the request for information.<sup>32</sup> Also, if either an adopted child or the sibling of an adopted child submits a written request for information about a sibling, the DHR is required to attempt to identify and notify that sibling of the request and, if consent is given, provide the name and address of the sibling.<sup>33</sup> Finally, the Division of Family and Children Services Adoption Unit is required to keep a registry of requests for information and consents or objections to release of information.<sup>34</sup>

Although the revised Adoption Code was much more "user friendly," provided for earlier placement of an adopted child, and generally was a significant improvement over the previous Code,<sup>35</sup> there were, as with

24. O.C.G.A. § 19-8-11 (1991). Formerly, the termination of parental rights under these conditions had to be handled separately in a juvenile court proceeding. Outman Letter, *supra* note 21.

25. FAMILY LAW NEWSLETTER, *supra* note 2, at 3.

26. O.C.G.A. § 19-8-23 (1991).

27. *Id.*

28. *Id.*

29. O.C.G.A. § 19-8-23(d) (1991).

30. O.C.G.A. § 19-8-23(f)(2) (1991).

31. O.C.G.A. § 19-8-23(f)(3) (1991).

32. O.C.G.A. § 19-8-23(f)(4)(A) (1991).

33. O.C.G.A. § 19-8-23(f)(5) (1991).

34. O.C.G.A. § 19-8-23(f)(6) (1991).

35. Outman Interview, *supra* note 3.

any new or revised code, technical problems which needed to be corrected.<sup>36</sup> Further, on December 10, 1990, the Georgia Attorney General issued an opinion interpreting section 24 of the Adoption Code.<sup>37</sup> Section 24 makes it unlawful for anyone other than a licensed child-placement agency to advertise to adopt or arrange adoption of children.<sup>38</sup> However, section 24 also permits personal communications by individuals seeking to adopt children.<sup>39</sup> The Attorney General determined that a letter which referred responses to an attorney, a "networking" letter, was no longer a personal communication and, therefore, not "exempt from the advertising prohibition."<sup>40</sup> The Attorney General further determined that, because of the limitations in O.C.G.A. section 49-5-12(q), an attorney "may not provide placement services unless licensed as a child-placing agency."<sup>41</sup>

#### *HB 604*

HB 604 was introduced for two reasons: to make the necessary technical corrections to the new Adoption Code and to correct the situation created by the Attorney General's Opinion.<sup>42</sup> As introduced, HB 604 included changes to several Code sections: section 19-8-13, which details the information necessary for filing an adoption petition; section 19-8-14, which defines when the hearing is to be held; section 19-8-16, which defines the duty of the DHR to investigate petitioners; section 19-8-20, which deals with the issuance of adoption certificates; section 19-8-23, which deals with the recording of records of adoption; section 19-8-24, which prohibits advertising related to adoptions; section 19-8-25, which discusses matters relative to the effective date of the revised Code section; and section 48-5-12, which deals with the licensing of child welfare agencies.<sup>43</sup> All of the initial changes and additions remained in the final version of the bill.<sup>44</sup> However, the bill passed by the House was a Judiciary Committee Substitute which also contained changes to Code sections 19-8-5 (independent adoptions), 19-8-6 (stepparent adoptions), and 19-8-7 (relative adoptions).<sup>45</sup> The final version of the bill, passed by the Senate and accepted by the House, was a substitute offered by the Senate Committee on Youth, Aging and Human Ecology, and contained

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36. Telephone Interview with Rep. Mary Margaret Oliver, House District No. 53 (Apr. 3, 1991) [hereinafter Oliver Interview].

37. 1990 Op. Att'y Gen. 42.

38. O.C.G.A. § 19-8-24(a) (1991).

39. O.C.G.A. § 19-8-24(c) (1991).

40. 1990 Op. Att'y Gen. 42 at 4.

41. *Id.*

42. Oliver Interview, *supra* note 37; Outman Interview, *supra* note 3.

43. HB 604, as introduced, 1991 Ga. Gen. Assem.

44. O.C.G.A. §§ 19-8-13, -14, -16, -20, -23, -24, -25, 49-5-12 (1991).

45. HB 604 (HCS), 1991 Ga. Gen. Assem.

additional changes to the three sections added by the House Committee Substitute.<sup>46</sup>

The first three sections of HB 604 made identical changes to Code sections 19-8-5, -6, and -7.<sup>47</sup> In writing the Adoption Act of 1990, drafters attempted to structure release procedures for independent, stepparent, and relative adoptions similar to those for agency adoptions.<sup>48</sup> Surrenders had to be signed "in the presence of a representative of each petitioner,"<sup>49</sup> and the representative "before whom the surrender is signed" had to execute an affidavit.<sup>50</sup> This proved to be both costly and impractical since it required in some cases that the forms be hand delivered to different parts of the state.<sup>51</sup> As modified, the surrender must be signed in the presence of a notary, and the representative of each petitioner must execute an affidavit.<sup>52</sup> Thus, the forms can now be mailed to the appropriate representatives rather than being hand delivered.<sup>53</sup> Essentially, these changes return the particular requirements to what they were before the Adoption Act of 1990.<sup>54</sup>

Section 4 adds "marital status" to the information required of each petitioner.<sup>55</sup> The information is germane and was inadvertently omitted from the previous act.<sup>56</sup>

Section 5 is a technical correction to fix an omission from the Adoption Act of 1990.<sup>57</sup> When a juvenile court places a child for adoption, it may do so either by placing the child with an agency or by directly placing the child in a home.<sup>58</sup> The second method is rarely used because judges do not like it, but it is legally valid.<sup>59</sup> The Adoption Code of 1990 did not provide for direct placement by the juvenile courts.<sup>60</sup> Thus, subsection (g) was added to Code section 19-8-13 to provide that, when a child is directly placed by a juvenile court, the order terminating parental rights takes the place of "otherwise required surrenders, acknowledgments and affidavits."<sup>61</sup>

46. O.C.G.A. §§ 19-8-5 to -7 (1991).

47. *Id.*

48. Outman Interview, *supra* note 3.

49. 1990 Ga. Laws 1572 (formerly found at O.C.G.A. §§ 19-8-5(c), -6(c), -7(c) (Supp. 1990)).

50. 1990 Ga. Laws 1572 (formerly found at O.C.G.A. §§ 19-8-5(h), -6(h), -7(h) (Supp. 1990)).

51. Outman Interview, *supra* note 3.

52. O.C.G.A. §§ 19-8-5(c), (h), -6(c), (h), -7(c), (h) (1991).

53. Outman Interview, *supra* note 3.

54. *Id.*

55. O.C.G.A. § 19-8-13(a)(1)(A) (1991).

56. Outman Interview, *supra* note 3.

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. O.C.G.A. § 19-8-13(g) (1991).

Section 6 is merely a clarification.<sup>62</sup> As originally written, only the petition for adoption had to be sent to the DHR.<sup>63</sup> Normally, a petition for adoption will also have related motions, amendments, and orders.<sup>64</sup> The revised Code section requires that a complete file be sent to the DHR.<sup>65</sup>

Section 7 amends Code section 19-8-16 to require that the petitioner pay for a criminal record check if one is required.<sup>66</sup> The requirement for a criminal record check was added to the Adoption Code by the Adoption Act of 1990.<sup>67</sup> There is a fee for such a check, and the Adoption Act of 1990 did not specify who was to pay the fee.<sup>68</sup> By requiring the fee to be paid by the petitioner, the Code is more fiscally responsible and clarifies the question of who pays for the criminal record check.<sup>69</sup>

Section 8 amends the Adoption Code to allow an adult adoptee to request and acquire his own certificate of adoption.<sup>70</sup> Although the Code prior to the Adoption Act of 1990 also specified that "parents of an adoptee" could request a certificate of adoption,<sup>71</sup> adult adoptees were routinely given certificates of adoption at their own request.<sup>72</sup> Under the revised Code, however, one court denied a certificate of adoption to an adult adoptee, requiring that the request come from the parents.<sup>73</sup> Therefore, the Code was modified to provide a logical solution to a situation which can and does arise.<sup>74</sup>

Section 9 adds a new subsection to the reunion registry section, allowing the DHR or a placement agency to designate an agent to perform any function that both the DHR and the placement agency may or must perform with "the same authority, powers, duties, and immunities" of the DHR or placement agency.<sup>75</sup> Although the Adoption Act of 1990 provided for a reunion registry,<sup>76</sup> it did not fund the registry.<sup>77</sup> Practically, it was necessary to allow the registry functions and research to be provided by an independent agency which could

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62. Outman Interview, *supra* note 3.

63. *Id.*

64. *Id.*

65. *Id.*; O.C.G.A. § 19-8-14 (1991).

66. O.C.G.A. § 19-8-16(d) (1991).

67. Outman Interview, *supra* note 3.

68. *Id.*

69. *Id.*

70. O.C.G.A. § 19-8-20(b) (1991).

71. 1977 Ga. Laws 201 (formerly found at O.C.G.A. § 19-8-15(b) (1982)).

72. Outman Interview, *supra* note 3.

73. *Id.*

74. *Id.*

75. O.C.G.A. § 19-8-23(f)(12) (1991).

76. 1990 Ga. Laws 1572 (formerly found at O.C.G.A. § 19-8-23(f) (Supp. 1990)).

77. Outman Interview, *supra* note 3.



charge a fee for the services.<sup>78</sup> The addition to section 19-8-23 grants this power.<sup>79</sup>

Section 10 is a purely technical correction.<sup>80</sup> The Adoption Act of 1990 contained one instance of "bad syntax" and a "bumpy sentence" in Code section 19-8-23(a).<sup>81</sup> The modification simply corrects these two syntactical errors.<sup>82</sup>

Section 11 was included to modify the Code to allow an attorney to include his name in a "networking letter" for the purpose of contact.<sup>83</sup> This modification was in direct response to the Attorney General Opinion of December 10, 1990, prohibiting the inclusion of the attorney's name.<sup>84</sup> The provision for personal communications by individuals was added by the Adoption Act of 1990 as a floor amendment, and was not intended to create the confusion which arose.<sup>85</sup> Since the Attorney General interpreted the provision differently than the General Assembly intended, the section was modified to state explicitly what was originally intended.<sup>86</sup>

Section 12 is a "legislative intent provision."<sup>87</sup> Although the Adoption Act of 1990 provided that a "consent or surrender executed on or before June 30, 1990"<sup>88</sup> (the day before the new Code became effective) was deemed to satisfy the new requirements, there was uncertainty as to whether the new, more rigorous requirements had to be met.<sup>89</sup> Code section 19-8-25 was modified to specify that when the petition was filed before July 1, 1990, a decree of adoption was valid if the requirements of either the old or the new law were met.<sup>90</sup>

Section 13 was included to clarify an issue relative to the licensing of placement agencies. The Code section modified<sup>91</sup> is not part of the Adoption Code but is related.<sup>92</sup> The Code had never specifically allowed individuals to deal for themselves in placing or adopting a child,<sup>93</sup> but self-placements had always been understood as an exception.<sup>94</sup> The addition of sub-subsections (1) and (2) to subsection (q) were included to

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.*; 1990 Ga. Laws 1572 (formerly found at O.C.G.A. § 19-8-23(a) (Supp. 1990)).

82. Outman Interview, *supra* note 3; O.C.G.A. § 19-8-23(a) (1991).

83. Outman Interview, *supra* note 3.

84. *Id.*; *see also* 1990 Op. Att'y Gen. 42.

85. Outman Interview, *supra* note 3.

86. *Id.*

87. *Id.*

88. 1990 Ga. Laws 1572 (formerly found at O.C.G.A. § 19-8-25 (Supp. 1990)).

89. Outman Interview, *supra* note 3.

90. *Id.*; O.C.G.A. § 19-8-25(b) (1991).

91. O.C.G.A. § 49-5-12 (1991).

92. Outman Interview, *supra* note 3.

93. *Id.*; 1990 Ga. Laws 8 (formerly found at O.C.G.A. § 49-5-12 (1990)).

94. Outman Interview, *supra* note 3.

put the exception into writing.<sup>95</sup> The addition of the words “or contemplating” to the sentence permitting an attorney to provide necessary legal services and counsel to parties “engaged in” adoption proceedings allow an attorney to consult with parties before they actually start adoption proceedings.<sup>96</sup> This provision was also essentially a clarification of the law to permit existing practices to continue.<sup>97</sup>

HB 604 made few substantive changes.<sup>98</sup> Primarily it was introduced and adopted to clarify and make technical changes to the Adoption Code which had been completely revised by the Adoption Act of 1990.<sup>99</sup>

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95. *Id.*

96. *Id.*; O.C.G.A. § 49-5-12(q) (1991).

97. Outman Interview, *supra* note 3.

98. *Id.*

99. *Id.*; Oliver Interview, *supra* note 36.