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HB 159 - Domestic Relations

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DOMESTIC RELATIONS

Adoption: Amend Title 19 of the Official Code of Georgia Annotated, Relating to Domestic Relations, so as to Substantially Revise the General Provisions Applicable to Adoptions; Change the Requirements for Adopting Children; Provide for a Nonresident to Allow an Adoption of His or Her Child; Provide for Adoption of Foreign-Born Children; Provide for a Waiver to Revoke a Surrender of Parental Rights under Certain Circumstances; Change the Age for Individuals to Access the Adoption Reunion Registry; Revise and Provide for Forms; Amend Code Section 15-11-320 of the Official Code of Georgia Annotated, Relating to Termination of Parental Rights, so as to Correct a Cross-Reference; Provide for the Creation, Authorization, Procedure, Revocation, Recision, and Termination of a Power of Attorney from a Parent to an Agent for the Temporary Delegation of Certain Power and Authority for the Care and Custody of His or Her Child; Repeal the “Power of Attorney for the Care of a Minor Child Act”; Provide for Definitions; Provide for Procedure; Grandfather Certain Provisions Relating to a Power of Attorney Given to a Grandparent; Provide a Short Title; Provide for Legislative Findings; Amend Part 4 of Article 17 of Chapter 2 of Title 20 of the Official Code of Georgia Annotated, Relating to Sick, Personal, and Maternity Leave for Teachers and Other School Personnel, so as to Require Local Boards of Education to Provide Employees Who are Adoptive Parents the Same Duration of Maternity Leave, Leave Options, and Other Benefits as Are Provided to Employees Who Are Biological Parents; Provide for Related Matters; Provide for an Effective Date; Repeal Conflicting Laws; And for Other Purposes

CODE SECTIONS:

O.C.G.A. §§ 15-11-320 (amended);
19-8-1, -2, -3, -4, -5, -6, -7, -8, -9, -10,
-11, -12, -13, -14, -15, -16, -17, -18,
-19, -20, -21, -22, -23, -24, -25, -26,
-27 (amended); 19-9-120, -21, -22, -23,
-24, -25, -26, -27, -28, -29 (amended)

BILL NUMBER:	HB 159
ACT NUMBER:	285
GEORGIA LAWS:	2018 Ga. Laws 19
SUMMARY:	This bill provides a major overhaul for Georgia adoption laws, which were last updated in 1990. The most notable changes include shortening the period for revocation of surrender of parental rights; granting temporary power of attorney for the care of a child; allowing adoptive parents to pay a birth mother's expenses; lowering the age for adoptive relatives; and simplifying the process to adopt foreign-born children.
EFFECTIVE DATE:	September 1, 2018

History

In 2001, a five-year-old boy and his mother traveled from Honduras to America to seek treatment for his leukemia.¹ When there appeared to be no end of treatment in sight, his parents made the difficult decision to relinquish their parental rights so that his aunt and uncle, Georgia residents, could adopt him and take on his medical care.² In 2006, his aunt and uncle's petition for adoption was denied.³ The court reasoned that the child did not have a valid visa, his relatives failed to complete certain necessary steps with immigration services, and Honduran law prohibits adoptions when a biological parent is still living.⁴ The Georgia Court of Appeals ultimately reversed the decision one year later.⁵ The court stated that the lower court applied the wrong law to the case.⁶ Rather than consider whether this was a valid domestic adoption of a foreign-born child under Code section 19-8-8, the Court of Appeals

1. *In re* Adoption of D.J.F.M., 284 Ga. App. 420, 420, 643 S.E.2d 879, 880 (2007).

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.* at 424, 643 S.E.2d at 882.

6. *Id.* at 421, 643 S.E.2d at 880–81.

explained that the lower court should have evaluated whether this was a valid adoption of a relative according to Code section 19-8-7.⁷ Because his aunt and uncle were over the age of twenty-five; were ten years older than him; lived in Georgia for six months; and were financially, physically, and mentally able to care for him, the court found that the trial court erred in denying the petition for adoption, and it remanded the case to consider whether the relatives met the other requirements necessary to adopt their nephew.⁸

Although these Georgia residents successfully demonstrated that they qualified as relatives to adopt their nephew, this case represents two problems that were common in Georgia adoptions. First, the adoption process could be quite difficult, and any complication could prolong proceedings for years. Second, the adoption process could be quite limited and narrow in scope. Provided that they met the other mandatory adoption provisions during the remanded proceedings, the aunt and uncle could adopt their foreign-born nephew because he was a blood relative. But what if a family friend wanted to adopt and care for a child under similar circumstances? Or what if his aunt and uncle were not yet age twenty-five?

Frustrated by issues like these, the Georgia General Assembly initiated bipartisan efforts to amend Title 9 of the Official Code of Georgia Annotated to simplify adoption procedures.⁹ Some of the legislature's top priorities included making it easier for relatives to adopt other relatives and opening wider avenues for domesticating foreign-born children.¹⁰ Additionally, the General Assembly wanted to allow adoptive parents to reimburse birth mothers for incurred expenses, which former Georgia law prohibited.¹¹ Finally, Georgia law previously allowed a birth mother ten days to change her mind

7. *In re Adoption of D.J.F.M.*, 284 Ga. App. at 421, 643 S.E.2d at 880–81.

8. *Id.* at 423, 643 S.E.2d at 881–82.

9. *See, e.g.*, Video Recording of Senate Committee on Judiciary Meeting at 6 min., 7 sec. (Jan. 10, 2018) (remarks by Sen. Jesse Stone (R-23rd)), <https://livestream.com/accounts/25225500/events/7945310/videos/168333070> [<https://perma.cc/HPR4-YZB7>].

10. Video Recording of Senate Proceedings at 2 hr., 6 min., 25 sec. (Feb. 5, 2018) (remarks by Sen. Jesse Stone (R-23rd)), <http://www.gpb.org/lawmakers/2018/day-15> [<https://perma.cc/KTL5-PVHY>].

11. *Id.* at 2 hr., 9 min., 50 sec.; *see also* Video Recording of Legislative Day 15, GPB Lawmakers at 10 min., 42 sec. (Feb. 5, 2018) (remarks by Sen. Bill Cowsert (R-46th)), <http://www.gpb.org/lawmakers/2018/day-15> [<https://perma.cc/KTL5-PVHY>] [hereinafter Legislative Day 15 Video].

after putting her child up for adoption.¹² This made some parents hesitant to adopt in the first place, as they feared the emotional upheaval that would inevitably arise if they had to return a child to her birth mother.¹³

Although nearly every legislator agreed on the need for reforms addressing these issues, a large divide ensued when it came to one proposal: allowing adoption agencies to turn down prospective adoptive parents on the basis of religion.¹⁴ Presumably, argued many legislators, this would discriminate against same-sex couples.¹⁵ Legislators in favor of the proposal countered that it broadly protected any adoption agency with a particular mission, and therefore, it encouraged “diversity in our culture.”¹⁶ Georgia Governor Nathan Deal (R) weighed in, calling on the General Assembly to produce a “clean bill” by removing the amendment.¹⁷ Ultimately, this controversial provision led Georgia Senators to propose recommitting the bill until the 2018 legislative session.¹⁸

Bill Tracking of HB 159

Consideration and Passage by the House

Representatives Bert Reeves (R-34th), Wendell Willard (R-51st), Stacey Evans (D-42nd), Barry Fleming (R-121st), Mary Margaret Oliver (D-82nd), and Ed Setzler (R-35th) sponsored the bill in the

12. Legislative Day 15 Video, *supra* note 11.

13. Electronic Mail Interview with Sen. Elena Parent (D-42nd) (May 22, 2018) (on file with Georgia State University Law Review) [hereinafter Parent Interview].

14. *See, e.g.*, Kristina Torres, *Late Changes to Georgia Adoption Bill Spur Fears of Discrimination*, ATLANTA J.-CONST. (Mar. 16, 2017), <https://www.ajc.com/news/state—regional-govt—politics/late-changes-georgia-adoption-bill-spur-fears-discrimination/uWxxahoa1q4LwXBDgcovAN/> [https://perma.cc/7ZZV-FGCP].

15. *See id.* (detailing how members of the Senate Judiciary Committee worried that the proposal violated nondiscrimination laws and would jeopardize federal funding to DFCS).

16. *Id.* Senator William Ligon described how the bill would provide options to agencies beyond faith-based missions; for instance, agencies could elect to place children only with African-American families. *Id.*

17. Aaron Gould Sheinin, *Governor, Speaker Call on Senate to Act on ‘Clean’ Adoption Bill*, ATLANTA J.-CONST. (Mar. 24, 2017, 2:55 PM), <https://www.ajc.com/news/state—regional-govt—politics/update-governor-speaker-call-senate-act-clean-adoption-bill/ocRIELXDln8Q6U6R2bysO/> [https://perma.cc/MR4J-DBMB].

18. Parent Interview, *supra* note 13.

Georgia House of Representatives.¹⁹ The House read the bill for the first time on January 30, 2017,²⁰ at which time it was committed to the House Judiciary Committee.²¹ The bill was read for a second time on January 31, 2017.²² On February 16, 2017, the House Judiciary Committee favorably reported a Committee substitute version of the bill.²³

The House Judiciary Committee substitute added a new provision to the bill, Code section 20-2-852.1. From lines 3421 to 3434, the House Judiciary Committee added a requirement that local boards of education provide the same leave and benefits to employees who are adoptive parents as they would to employees who are biological parents.²⁴ This included illness, disability, and maternity and paternity leave. However, it did not include adoption by the spouse of a custodial parent.²⁵ The Committee substitute also deleted the requirement in lines 3405 through 3409 that a petition for annulment of an adoption be filed in the court in which the adoption was initially granted.²⁶ The House read the bill for the third time on February 24, 2017, and on the same day, passed the Committee substitute of HB 159 by a unanimous vote.²⁷

Consideration and Passage by the Senate

Senator Jesse Stone (R-23rd) sponsored the bill in the Georgia Senate.²⁸ The bill was first read on February 27, 2017, and referred to

19. Georgia General Assembly, HB 159, Bill Tracking, <http://www.legis.ga.gov/legislation/en-US/Display/20172018/HB/159> (copy on file with Georgia State University Law Review) [hereinafter HB 159 Bill Tracking].

20. State of Georgia Final Composite Status Sheet, HB 159, Jan. 30, 2017.

21. *Id.*

22. State of Georgia Final Composite Status Sheet, HB 159, Jan. 31, 2017.

23. State of Georgia Final Composite Status Sheet, HB 159, Feb. 16, 2017.

24. Compare HB 159 (LC 29 7270ER), 2017 Ga. Gen. Assemb., with HB 159 (LC 29 7393ERS), 2017 Ga. Gen. Assemb.

25. HB 159 (LC 29 7393ERS) 2017 Ga. Gen. Assemb.

26. *Id.*

27. HB 159 Bill Tracking, *supra* note 19. Four members did not vote, and eleven members were excused. *Id.*

28. *Id.*

the Senate Committee on Judiciary.²⁹ The Senate read the bill for a second time on March 20, 2017.³⁰

The first Senate Committee on Judiciary substitute made multiple changes to the House Committee substitute relating to adoption proceedings.³¹ First, the Senate Committee substitute changed the time frame that an individual has to waive the ten-day revocation period after the surrendering of rights from “at least 24 hours after the birth of the child” to “at least 48 hours after the birth of child.”³² The Senate Committee edited the same Code sections by requiring the waiver of the ten-day revocation period to be “attested to by an attorney certifying that it was knowingly and voluntarily executed.”³³ The Senate Committee also reflected both the forty-eight hour change and the attestation by an attorney provision in the “Notice of Parent or Guardian” form.³⁴

Additionally, the Senate Committee added Code section 19-8-12(g), which allows the court “to consider the affidavit of the mother specified in subsection (g) of Code Section 19-8-4, 19-8-5, 19-8-6, or 19-8-7,” when an alleged biological father who is not a legal father files a legitimation petition after the mother surrenders parental rights.³⁵ The Senate Committee specifically stated:

If the court finds from the evidence that such biological father has not lived with the child, contributed to the child’s support, or provided support or medical care during the mother’s pregnancy or hospitalization for the birth of the child, the court shall conclude that the biological father abandoned his opportunity interest to legitimate the child and deny his petition for legitimation and he shall not thereafter be allowed to object to the adoption nor be

29. State of Georgia Final Composite Status Sheet, HB 159, Feb. 27, 2017.

30. State of Georgia Final Composite Status Sheet, HB 159, Mar. 20, 2017.

31. See HB 159 (LC 29 7571ERS) 2017 Ga. Gen. Assemb.

32. *Id.* § 1, p. 5, l. 157.

33. *Id.* § 1, p. 5, ll. 157–58.

34. *Id.* § 1, p. 71, ll. 2467–70.

35. *Id.* § 1, p. 26, ll. 913–16.

entitled to receive further notice of the adoption proceedings.³⁶

The Senate Committee also addressed the situation of placing a child when the court denies a petition for adoption and there has not been a surrender of rights: the Act requires that the court “place the child with the department for the purpose of determining whether or not a petition should be initiated under Chapter 11 of Title 15.”³⁷

The Senate Committee substitute created Section 4 of the bill and added Code section 49-5-25.³⁸ Code section 49-5-25 allows a child-placing agency to not accept a referral for foster care or adoption services based on the child-placing agency’s mission.³⁹

On March 22, 2017, the Senate withdrew the bill from the general calendar and recommitted the bill to the Senate Committee on Judiciary.⁴⁰ The Senate Committee on Judiciary favorably reported the bill by Committee substitute on January 11, 2018.⁴¹ The second Senate Committee substitute amended Code section 19-8-3(a) to allow a relative who is at least twenty-one years of age to petition to adopt a child.⁴² This Senate Committee substitute also changed the age that an individual can waive the ten-day revocation period from eighteen to twenty-one and changed the time from forty-eight to seventy-two hours after the birth of the child.⁴³ The Senate Committee substitute further amended Code section 19-8-12(g) by adding “preponderance of the evidence” as the evidentiary standard when the court considers whether an alleged biological father abandoned his opportunity interest to legitimate a child.⁴⁴ The Senate Committee also amended Code section 19-8-13(c) by removing the provision allowing for “[a]ny additional reasonable and necessary expenses authorized by the court” from the list of adoption expenses that the petitioner must include in the petition.⁴⁵ The Senate

36. *Id.* § 1, p. 26, ll. 916–22.

37. HB 159 (LC 29 7571ERS), § 1, p. 43, ll. 1507–09, 2017 Ga. Gen. Assemb.

38. *Id.* § 4, p. 101, l. 3475.

39. *Id.* § 4, p. 101, ll. 3482–84.

40. State of Georgia Final Composite Status Sheet, HB 159, Mar. 22, 2017.

41. State of Georgia Final Composite Status Sheet, HB 159, Jan. 11, 2018.

42. HB 159 (LC 29 7730ERS), § 1-1, p. 4, l. 110, 2018 Ga. Gen. Assemb.

43. *Id.* § 1-1, p. 5, ll. 155–58.

44. *Id.* § 1-1, p. 26, l. 918.

45. Compare HB 159 (LC 29 7571ERS), § 1, p. 32, ll. 1142–43, 2017 Ga. Gen. Assemb., with HB

Committee removed the requirement that adoption attorneys provide the court with “an accounting for all funds disbursed through the attorney’s trust account.”⁴⁶ The Senate Committee amended Code section 19-8-24(c) to exclude the payment or reimbursement of certain expenses from the definition of inducements, if these payments or reimbursements are paid by a licensed child-placing agency or attorney.⁴⁷ The Senate Committee removed Code section 19-8-24(c)(4), which allowed a petitioner to file a pre-birth petition and a motion for an order approving the payment of any reasonable and necessary expenses.⁴⁸ Code section 19-8-24(c)(4) also required that expenses be paid from the trust account of an attorney and directly to the provider of the services.⁴⁹

Additionally, the Senate Committee added Sections 2-1 and 2-2 to Part II of the bill.⁵⁰ Section 2-1 explained that there may be times when “[p]arents need a means to confer to a relative or other approved person the temporary authority to act on behalf of a child” without involving the Division of Family and Children Services.⁵¹ Section 2-2 repealed Article 4 of Chapter 9, relating to the power of attorney for the care of a minor child, and enacted a new Article 4.⁵² The Senate Committee specified who could receive caregiving authority, limiting the approved persons to relatives, non-relatives approved by a child-placing agency, and non-profit entities or faith-based organizations.⁵³ The Senate Committee provided that a parent could delegate “any power and authority regarding the care and custody” of the child, except marriage, adoption, abortion, or the termination of parental rights.⁵⁴ The Senate Committee provided that the power and authority could be delegated without the approval of the court.⁵⁵ The new Article 4 did not affect the receipt of child

159 (LC 29 7730ERS), § 1-1, p. 32, l. 1136, 2018 Ga. Gen. Assemb.

46. Compare HB 159 (LC 29 7571ERS), § 1, p. 33, ll. 1151–53, 2017 Ga. Gen. Assemb., with HB 159 (LC 29 7730ERS) § 1-1, p. 33, l. 1149, 2018 Ga. Gen. Assemb.

47. HB 159 (LC 29 7730ERS) § 1-1, p. 55, ll. 1942–46, 2018 Ga. Gen. Assemb.

48. Compare HB 159 (LC 29 7571ERS), § 1, p. 55, ll. 1960–69, 2017 Ga. Gen. Assemb., with HB 159 (LC 7730ERS), § 1-1, p. 55, l. 1959, 2018 Ga. Gen. Assemb.

49. HB 159 (LC 29 7571ERS), § 1, p. 55, ll. 1960–69, 2017 Ga. Gen. Assemb.

50. HB 159 (LC 29 7730ERS), §§ 2-1–2, pp. 100–01, ll. 3453–64, 2018 Ga. Gen. Assemb.

51. *Id.* § 2-1, p. 100, ll. 3458–61.

52. *Id.* § 2-2, p. 101, ll. 3465–67.

53. *Id.* § 2-2, p. 101, ll. 3477–82.

54. *Id.* § 2-2, p. 101, ll. 3485–89.

55. *Id.* § 2-2, p. 101, ll. 3489–90.

support payments and directed the Child Support Enforcement Agency to redirect payments to the agent for the duration of the power of attorney.⁵⁶ The Act prohibits the power of attorney executed under Article 4 from exceeding one year, unless the agent is a grandparent. Further, the individual who executed the power of attorney can revoke it.⁵⁷ The power of attorney must be signed under oath and acknowledged before a notary public by the individual executing the power of attorney and the agent.⁵⁸ The Act dictates that the parties to the power of attorney are not under supervision of the Division of Family and Children Services and therefore are not subject to any of the requirements or regulations for foster care or community care.⁵⁹

Finally, the Senate Committee removed Code section 49-5-25, which allowed a child-placing agency to refuse a referral for foster care or adoption based on the child-placing agency's mission.⁶⁰ The Senate Committee also deleted Section 5 of the bill, which amended Chapter 21 of Title 50.⁶¹

The Senate read the bill for a third time and passed the bill by Committee substitute on January 18, 2018.⁶² The Senate transmitted the bill to the House on February 1, 2018.⁶³ The Senate agreed to the House Amendment on February 5, 2018.⁶⁴ Governor Nathan Deal (R) signed the bill on March 3, 2018, and the bill became effective on September 1, 2018.⁶⁵

56. HB 159 (LC 29 7730ERS), § 2-2, pp. 101–02, ll. 3494–99, 2018 Ga. Gen. Assemb.

57. *Id.* § 2-2, pp. 103–04, ll. 3563–66.

58. *Id.* § 2-2, p. 103, ll. 3557–59.

59. *Id.* § 2-2, p. 105, ll. 3599–602.

60. *Compare* HB 159 (LC 29 7571ERS), § 4, p. 101, ll. 3482–84, 2017 Ga. Gen. Assemb., *with* HB 159 (LC 29 7730ERS), § 4-1, p. 112, l. 3804, 2018 Ga. Gen. Assemb.

61. *Compare* HB 159 (LC 29 7571ERS), § 5, p. 102, ll. 3505–24, 2017 Ga. Gen. Assemb., *with* HB 159 (LC 29 7730ERS), § 4-1, p. 112, 2018 Ga. Gen. Assemb.

62. State of Georgia Final Composite Status Sheet, HB 159, Jan. 18, 2018.

63. State of Georgia Final Composite Status Sheet, HB 159, Feb. 1, 2018.

64. State of Georgia Final Composite Status Sheet, HB 159, Feb. 5, 2018.

65. SB 159 Bill Tracking, *supra* note 19.

*The Act**Part I*

Part I of the Act amends Code sections 19-8-1 through 19-8-28, altering general adoption provisions, including adoption requirements, foreign-born adoptions, surrender of rights and revocation, adoption-related forms, and procedures.

Section 1-1

Section 1-1 amends all general provisions related to adoption under Chapter 8 of Title 19. Code section 19-8-1, as amended, creates additional definitions for parties involved in adoption.⁶⁶ The section maintains most of the language of the original Code section, but it includes provisions recognizing Alaskan natives and members of American Indian tribes as individuals of Native American heritage.⁶⁷ The section also defines a biological parent as “a biological mother or biological father” and more specifically describes a guardian in accordance with other provisions of the Code, including Title 29 and Code section 15-11-13.⁶⁸ Finally, the section defines an “[o]ut-of-state licensed agency” as “an agency or entity that is licensed in another state or country to place children for adoption.”⁶⁹

Code section 19-8-2 addresses the jurisdiction for filing petitions.⁷⁰ Typically, a petitioner must file a petition in the county in which she resides, but she may file a petition in the county in which the child, child-placing agency, or department exercising custody is located, or in the county where the child was born if the child is less than one year of age.⁷¹ If the petitioner is a resident of another state, she should file the petition in the county where the child was born, the

66. O.C.G.A. § 19-8-1 (2018).

67. *Id.*

68. *Id.*

69. *Id.*

70. O.C.G.A. §19-8-2 (2018).

71. *Id.*

county where the child-placing agency is located, or the Superior Court of Fulton County.⁷²

Code section 19-8-3 provides that any relative of a child may adopt the child if the relative is twenty-one years old. The Code section retains prior language allowing married couples who live together or individuals who are twenty-five years old to adopt.⁷³ The Act removes language requiring an individual to be a resident of Georgia for six months prior to adoption; instead, an individual must prove that she is a bona fide resident of Georgia or another receiving state in accordance with Chapter 4 of Title 39, regardless of how long the individual has lived in the state.⁷⁴

The Act continues to permit a biological parent or a legal mother to surrender his or her rights to a child and later revoke the surrender of his or her rights under Code section 19-8-4. However, the time period for revocation is now four days instead of ten.⁷⁵ Additionally, the parent surrendering rights must sign an oath in the presence of a notary public and adult witness and execute an affidavit, which must be signed under oath in the presence of a notary public.⁷⁶ Finally, this section repeatedly includes “out-of-state licensed agency” in its provisions; agencies such as these come into play, for example, when a biological parent surrenders his rights, committing the child to an agency’s custody.⁷⁷

Code section 19-8-5 also stipulates that, as of the date of surrender, the party receiving custody of the child is financially responsible for the child.⁷⁸ A petition for adoption must be filed within sixty days of the surrender of rights unless “good cause” can be shown to extend the time period.⁷⁹ If the petitioner does not timely file, the surrender operates in the following order: (1) in favor of the parent or legal guardian designated in the surrender; (2) in favor of the child-placing

72. *Id.*

73. O.C.G.A. § 19-8-3(a) (2018).

74. *Id.*

75. O.C.G.A. § 19-8-4(d) (2018).

76. O.C.G.A. § 19-8-4(e)–(g) (2018).

77. *See* O.C.G.A. § 19-8-4(a)–(c) (2018).

78. O.C.G.A. § 19-8-5(a) (2018).

79. O.C.G.A. § 19-8-5(j) (2018).

agency, whether in-state or out-of-state; or (3) in favor of the department for placing adoptions according to Code section 19-8-4.⁸⁰

Most of the language in Code section 19-8-6 remains the same. The spouse of a legal parent may adopt a child if the other legal parent surrenders to the spouse his or her rights to the child.⁸¹ If the legal parent is no longer living, the living legal parent must consent to the adoption, and any legal guardians must surrender their rights to the child.⁸² Furthermore, a non-resident (including foreign citizens) may surrender her legal rights so long as she is eighteen years of age and has consented to the jurisdiction of Georgia courts.⁸³

Adoptions by relatives largely remain the same in Code section 19-8-7. Again, these provisions require the presence of a notary public and an adult witness when a surrender of rights occurs, the revocation period is shortened to four days, and the surrender must include a signed affidavit.⁸⁴ Like in Code section 19-8-6, a non-resident may surrender her rights if she has reached the age of eighteen and consents to jurisdiction in Georgia.⁸⁵

Code section 19-8-8 significantly changed Georgia law relating to provisions for foreign-born adoptions. Now, a foreign-born child is eligible for a domestic adoption “if a consular officer of the United States Department of State has issued and affixed in the child’s passport an immediate relative immigrant visa or Hague Convention immigrant visa.”⁸⁶ Either of these documents may serve as prima facie evidence that the child’s parents surrendered their rights and that the domestic adoption complies with the laws of the foreign country.⁸⁷ Similarly, these documents serve as prima facie evidence that a parent has relinquished rights to her child in favor of a legal guardian.⁸⁸ When this prima facie evidence exists, a Georgia court does not need to investigate into the foreign country’s adoption process.⁸⁹ However, when a foreign court requires supervision of the

80. *Id.*

81. O.C.G.A. § 19-8-6(a) (2018).

82. *Id.*

83. O.C.G.A. § 19-8-6(i) (2018).

84. O.C.G.A. § 19-8-7(c)–(e) (2018).

85. O.C.G.A. § 19-8-7(i) (2018).

86. O.C.G.A. § 19-8-8(a)(1) (2018).

87. O.C.G.A. § 19-8-8(a)(2) (2018).

88. O.C.G.A. § 19-8-8(b)(2)(A) (2018).

89. *Id.*

guardian, a domestic court cannot finalize the adoption until documentation demonstrates that the petitioner met the requirements of the foreign order.⁹⁰ When an adoption is finalized, the child will receive a Certificate of Foreign Birth through the Georgia Department of Public Health.⁹¹

Code section 19-8-9 largely retains its former language regarding the process for revoking a surrender of rights. An individual may revoke such notice in person or by registered mail, and the revocation must be in writing.⁹² The revocation period is four days, excluding Saturdays, Sundays, and legal holidays.⁹³

A court need not wait for a parent to surrender or terminate her rights to the child when certain conditions described in Code section 19-8-10 exist. For instance, abandonment, mental or emotional incapacity, nonconsensual sexual intercourse that resulted in a child's conception, and instability within the home are permitted reasons for not seeking a biological parent's surrender of rights.⁹⁴ A petitioner should serve a parent with notice that her rights will terminate, at which point the biological parent will have an opportunity to demonstrate why she should retain her rights to the child.⁹⁵ The petitioner must attempt to provide notice through in-person service first, but registered mail or statutory overnight delivery are permissible "if personal service cannot be permitted"; beyond that, a court need not publish notice.⁹⁶ Finally, a petitioner must allege facts as to why the court should terminate the parent's rights.⁹⁷

Code section 19-8-11 gives adoption agencies similar opportunities to terminate parental rights, and they must do their due diligence to serve the parent through the process described in Code section 19-8-10.⁹⁸

The rights of a biological father are outlined in Code section 19-8-12. Any man who engages in nonmarital sexual intercourse is

90. O.C.G.A. § 19-8-8(b)(2)(B) (2018).

91. O.C.G.A. § 19-8-8(b)(3) (2018).

92. O.C.G.A. § 19-8-9(a) (2018).

93. *Id.*

94. O.C.G.A. § 19-8-10(a) (2018).

95. O.C.G.A. § 19-8-10(c) (2018).

96. *Id.*

97. O.C.G.A. § 19-8-10(d) (2018).

98. O.C.G.A. § 19-8-11 (2018).

presumed to be on notice that a pregnancy and adoption proceeding may occur.⁹⁹ However, he retains a right to notice if his identity is known, if he is registered on the putative father registry according to Code section 19-11-19, or if he registered on the putative father registry to indicate possible paternity of the child.¹⁰⁰ The Act removes language requiring notice to the biological father if he lived with the child, contributed child support or medical care for the mother, or attempted to legitimize the child.¹⁰¹ Notice to the biological father is to be given through personal service, certified mail, or publication in the county newspapers where the petition was filed and the location of his last known address.¹⁰² However, the Act recognizes that time may be an issue and therefore permits publication to occur simultaneously with the other forms of process.¹⁰³

When the putative father registry does not yield any potential matches, a rebuttable presumption that the biological father is not entitled to notice arises.¹⁰⁴ If a biological father receives notice of the adoption proceedings and wants to keep his rights, he must, within thirty days, file a petition to legitimize the child and notify the court overseeing the proceedings as well as the entity that sent notice to the father about the petition.¹⁰⁵ However, a court has the discretion to consider whether the father lived with the child and provided financial support or medical care; a father's failure to do so creates a rebuttable presumption that he abandoned his interest in the child.¹⁰⁶

The contents of an adoption petition are set forth in Code section 19-8-13. Now, a petitioner must list a child's citizenship or immigration status if she is foreign-born or a foreign resident, and the petitioner must demonstrate how that status will become lawful.¹⁰⁷ Additionally, the law now requires the name of legal guardians and custodians, and petitioners must also describe whether any other

99. O.C.G.A. § 19-8-12(a) (2018).

100. O.C.G.A. § 19-8-12(b)(1)–(3) (2018).

101. O.C.G.A. § 19-8-12(b)(4) (2018).

102. O.C.G.A. § 19-8-12(c) (2018).

103. *Id.*

104. O.C.G.A. § 19-8-12(d)(4) (2018).

105. O.C.G.A. § 19-8-12(e) (2018).

106. O.C.G.A. § 19-8-12(g) (2018).

107. O.C.G.A. § 19-8-13(a)(1)(A)–(C) (2018).

adoption proceeding is pending or if there is any custody dispute over the child.¹⁰⁸ The petition must include a copy of the surrender of rights or a court order terminating rights, as well as a copy of all relevant affidavits described in earlier sections.¹⁰⁹ A child-placing agency must also provide an affidavit confirming the legal availability of the child, and the petitioner must file relevant records that address various aspects of the adoption, such as marriage and death certificates.¹¹⁰ Records must show whether a petitioner could locate the biological father, and the child's background information should be included.¹¹¹ In the case of a foreign-born child, a petitioner must include a copy of the child's immediate relative immigrant visa or Hague Convention visa.¹¹² Furthermore, "[b]ecause the issuance of an immediate relative immigrant visa or Hague Convention immigrant visa by the United States Department of State in the child's passport is prima facie evidence that all parental rights have been terminated," a petitioner need not produce additional documents demonstrating biological parents' termination or surrender of rights.¹¹³ When a foreign-born child undergoes a proceeding for guardianship pursuant to Code section 19-8-8(b), the petition must include a copy of the final order of guardianship, postplacement reports, authorization to proceed with the adoption, and a copy of the child's birth certificate in addition to one of the required visas.¹¹⁴

As the Act previously required, the petitioner must also file a financial report that includes expenses related to the child's birth and placement.¹¹⁵ However, additional provisions require the report to list expenses related to counseling or legal services for the legal mother, as well as "reasonable expenses" incurred by the biological mother.¹¹⁶ The petitioner must also serve a copy of the petition for adoption to any family member who has visitation rights to the child at least thirty days before the adoption hearing.¹¹⁷ This broadens the

108. O.C.G.A. § 19-8-13(a)(1)(G)–(I) (2018).

109. O.C.G.A. § 19-8-13(a)(2)(A)–(B) (2018).

110. O.C.G.A. § 19-8-13(a)(2)(C) (2018).

111. O.C.G.A. § 19-8-13(a)(1)(A)–(B), (H).

112. O.C.G.A. § 19-8-13(a)(6)(B) (2018).

113. *Id.*

114. O.C.G.A. § 19-8-13(a)(6)(C) (2018).

115. O.C.G.A. § 19-8-13(c) (2018).

116. *Id.*

117. O.C.G.A. § 19-8-13(f) (2018).

Act's prior language, which only required notice to other family members with visitation rights when the petitioner was a blood relative of the child.¹¹⁸

In accordance with previous sections describing service of process, Code section 19-8-14 outlines the timeline for adoption proceedings. For instance, a court must wait at least forty-five days from the time a petition is filed to consider the petition, and it must wait at least thirty days from the time a parent is put on notice of the proceedings.¹¹⁹ However, if service of process is not necessary, a petitioner may demonstrate that it is in the child's best interests to expedite the process.¹²⁰

Code section 19-8-15 provides that blood relatives may file objections to a petition for adoption when both parents—legal or biological—are deceased.¹²¹ A relative with visitation rights to the child may also file objections if the biological parents' rights have been terminated.

A court-appointed agent must investigate the petition for adoption under Code section 19-8-16. Such agent could be a member of the department, a child-placing agency, or other qualified third party.¹²² The petitioner is responsible for paying the agent at a cost that will typically not exceed \$250.00.¹²³ However, if the cost will exceed \$250.00, the court must give the petitioner an opportunity to seek a different agent who will charge less.¹²⁴ Finally, the petitioner must undergo a background check, and a court may require additional information related to the petitioner's criminal history.¹²⁵

Code section 19-8-17 describes what the investigator must include in her report. This language remains mostly identical to the original Code section, but it adds a stipulation that an agent can disclose "[a]ny other information that might be disclosed by the investigation

118. *Compare* O.C.G.A. § 19-8-13(f)(2) (2018), with 2016 Ga. Laws 333, § 2, at 104-07 (formerly found at O.C.G.A. § 19-8-13(f)(2) (2016)).

119. O.C.G.A. § 19-8-14(c) (2018).

120. O.C.G.A. § 19-8-14(e) (2018).

121. O.C.G.A. § 19-8-15(b) (2018).

122. O.C.G.A. § 19-8-16(a) (2018).

123. O.C.G.A. § 19-8-16(e) (2018).

124. *Id.*

125. O.C.G.A. § 19-8-16(d) (2018).

in response to any specific issue that the court requested be investigated in its order appointing such agent.”¹²⁶

When a court enters a decree of adoption, it must follow the procedures laid out in Code section 19-8-18. The court must ensure that the rights of each parent or guardian were surrendered or terminated, each petitioner is able to care for the child, the child is prepared for adoption, and the adoption is in the child’s best interests.¹²⁷ In its decree, the court must name the child; terminate the rights of each parent, guardian, or custodian; and grant permanent custody to the petitioner.¹²⁸ The court may choose to allow a family member’s visitation rights to continue pursuant to Code section 19-7-3.¹²⁹

In the case of a foreign-born adoption, the court must determine whether the child will be able to become a permanent resident before it can authorize an adoption.¹³⁰ Similar to a local adoption, a court may issue a decree for a foreign-born adoption once it has determined that the child’s parents surrendered their rights, the petitioners are capable of caring for the child, the child is suitable for adoption, and the adoption will be in the child’s best interests.¹³¹ Additionally, if the petitioner adequately proves that a foreign court already granted an adoption, a Georgia court must domesticate the adoption, and it may do so without a hearing.¹³²

Moreover, Code section 19-8-18 also creates guidelines to determine whether an adoption is in a child’s best interests. These include, but are not limited to, the petitioner’s ability “to provide for the physical safety and welfare of the child,” bonding between the petitioner and child, “stability of the family unit,” the child’s background, family history, and “any other factors considered by the court to be relevant and proper to its determination.”¹³³ If a court denies a petition under this provision, it must explain why the

126. O.C.G.A. § 19-8-17(a)(9) (2018).

127. O.C.G.A. § 19-8-18(b) (2018).

128. *Id.*

129. *Id.*

130. *Id.*

131. O.C.G.A. § 19-8-18(d) (2018).

132. O.C.G.A. § 19-8-18(c) (2018).

133. O.C.G.A. § 19-8-18(e) (2018).

adoption would not be in the child's best interests.¹³⁴ Furthermore, denial of a petition dissolves the surrender of rights and restores such rights to the individual who surrendered them.¹³⁵ An individual wishing to challenge an adoption decree must do so within six months of the court's decision.¹³⁶

Code section 19-8-19, which describes the effects of a decree of adoption, and Code section 19-8-20, which outlines the contents of an adoption certificate, remain unchanged.¹³⁷ Code section 19-8-21 also retains most of its prior language, although it includes a provision that a petition for an adult adoption must state "whether one or both parents of the adult to be adopted will be replaced by the grant of such petition, and if only one parent is to be replaced, then the decree of adoption shall make clear which parent is to be replaced by adoption."¹³⁸ Code section 19-8-22, declaring that Georgia courts will recognize adoptions issued in any other jurisdiction, also remains largely the same.¹³⁹

Code section 19-8-23 addresses recordkeeping. Under this section, the State Adoption Unit keeps all adoption records sealed and locked.¹⁴⁰ However, once a child reaches eighteen years of age, she may request her adoption records in writing.¹⁴¹ Whereas the law previously required an individual to be twenty-one to receive identifying information about her biological parents, this section now lowers the age to eighteen.¹⁴² The individual will have access to a "detailed summary" regarding the placement agency, foster care, and her biological parents, provided each parent gave written consent to the release of identifying information.¹⁴³ If a biological parent is deceased, the agency may release the detailed summary to the adopted individual.¹⁴⁴ Finally, an eighteen-year-old individual may

134. O.C.G.A. § 19-8-18(g) (2018).

135. *Id.*

136. O.C.G.A. § 19-8-18(h) (2018).

137. O.C.G.A. § 19-8-19 (2018).

138. O.C.G.A. § 19-8-21(a) (2018).

139. O.C.G.A. § 19-8-22 (2018).

140. O.C.G.A. § 19-8-23(a) (2018).

141. O.C.G.A. § 19-8-23(f)(2) (2018).

142. O.C.G.A. § 19-8-23(f)(3)(A) (2018).

143. O.C.G.A. § 19-8-23(f)(3)(A)-(A)(i) (2018).

144. O.C.G.A. § 19-8-23(f)(4)(D)(iii) (2018).

request identification of her biological siblings, if such siblings are eighteen years of age.¹⁴⁵

Code section 19-8-24 continues to prohibit any individual or entity to advertise that it “will adopt children or will arrange for or cause children to be adopted or placed for adoption.”¹⁴⁶ The Act adds an exception to this existing prohibition by allowing a licensed attorney and a prospective adoptive parent with a valid home study report to advertise.¹⁴⁷ An entity may only advertise if it includes its department-issued license number.¹⁴⁸ Similarly, an attorney advertising on behalf of an individual with a valid home study must include her State Bar license number, and an individual advertising personally must include that she has a valid home study.¹⁴⁹

This section also prohibits selling or offering to sell a child.¹⁵⁰ It defines inducement as “any financial assistance, either direct or indirect, from whatever source” and deems any inducements related to an adoption unlawful.¹⁵¹ However, if an adoptive parent wishes to pay or reimburse “medical expenses directly related to the biological mother’s pregnancy and hospitalization” or “counseling services or legal services for a biological parent,” he may do so through a licensed child-placing agency or attorney.¹⁵² Furthermore, an adoptive parent may pay “reasonable living expenses for the biological mother” through a licensed child-placing agency.¹⁵³ Finally, an adoptive parent may pay other “reasonable expenses” for the biological mother through “the trust account of an attorney who is a member of the State Bar of Georgia in good standing.”¹⁵⁴ The petitioner must include a report of all expenses paid during the adoption process.¹⁵⁵

Code section 19-8-25 grandfathers in adoption petitions that were lawfully filed in accordance with the original Code as of August 31,

145. O.C.G.A. § 19-8-23(f)(5)(A) (2018).

146. O.C.G.A. § 19-8-24(a)(1) (2018).

147. *Id.*

148. O.C.G.A. § 19-8-24(a)(2)(A) (2018).

149. O.C.G.A. § 19-8-24(a)(2)(B)–(C) (2018).

150. O.C.G.A. § 19-8-24(b) (2018).

151. O.C.G.A. § 19-8-24(c)(1)–(5) (2018).

152. O.C.G.A. § 19-8-24(c)(1)(A)–(B) (2018).

153. O.C.G.A. § 19-8-24(c)(1)(C) (2018).

154. O.C.G.A. § 19-8-24(c)(1)(D) (2018).

155. *Id.*

2018.¹⁵⁶ In addition, Code section 19-8-26 amends the adoption forms themselves, including the forms regarding petitions for the surrender of rights; notice to parents; parental consent to adoption; and affidavits for child-placing agencies, biological parents, and Native American heritage and military service.¹⁵⁷

Code section 19-8-27 outlines post-adoption contract agreements. This section remains unchanged from its prior enactment.¹⁵⁸ The Act adds Code section 19-8-28, which states that a petitioner does not need to appoint a guardian for an orphaned child in order to receive a surrender of rights.¹⁵⁹

Section 1-2

Section 1-2 of the Act amends Code section 15-11-320 regarding termination of parental rights and renames the Georgia “Office of Adoptions” as the “State Adoption Unit.”¹⁶⁰

Part II

Part II of the Act amends Code sections 19-9-120 through 19-9-134.

Section 2-1

Section 2-1 includes the General Assembly’s findings regarding the “Supporting and Strengthening Families Act.”¹⁶¹ The legislature acknowledges that when parents experience difficulty in caring for their children, they “need a means to confer to a relative or other approved person the temporary authority to act on behalf of a child without the time and expense of a court proceeding or the involvement of the Division of Family and Children Services of the Department of Human Services.”¹⁶²

156. O.C.G.A. § 19-8-25 (2018).

157. O.C.G.A. § 19-8-26 (2018).

158. O.C.G.A. § 19-8-27 (2018).

159. O.C.G.A. § 19-8-28 (2018).

160. O.C.G.A. § 15-11-320(d) (Supp. 2018).

161. 2018 Ga. Laws 19, § 2-1, at 96.

162. *Id.*

Section 2-2

Section 2-2 repeals Code section 19-9-120 and replaces it with the Supporting and Strengthening Families Act, including related definitions in Code section 19-9-121.¹⁶³ Code section 19-9-122 permits a parent to “delegate caregiving authority” to an adult resident.¹⁶⁴ The list of permissible adults includes any relatives, stepparent, step-grandparent, or former stepparent.¹⁶⁵ A nonrelative may also assume authority by power of attorney for one year if a child-placing agency, nonprofit organization, or faith-based group approves this adult.¹⁶⁶ Such nonprofit organizations or faith-based groups that are not licensed by the department must provide an annual report related to their volunteer operations as dictated in Code section 19-9-123.¹⁶⁷ The department may then refer individuals seeking to create a power of attorney to such organizations, but the department will not be liable for any claim that arises as a result of its referral.¹⁶⁸

Code section 19-9-124 permits a parent to delegate power of attorney to an agent—giving her “the same rights, duties, and responsibilities that would otherwise be exercised by such parent”—for the care of a child without court approval.¹⁶⁹ The delegated agent may not consent to a child’s marriage or adoption or provide an abortion.¹⁷⁰ The delegation may not modify any existing rights that a court order created.¹⁷¹ An agent must confirm in writing that she takes responsibility for a child and is not registered as a sexual offender, and the agent must also undergo a background check if she is a nonrelative.¹⁷²

Under Code section 19-9-125, a parent with sole custody must notify the other parent within fifteen days after she has executed

163. O.C.G.A. §§ 19-9-120–21 (2018).

164. O.C.G.A. § 19-9-122 (2018).

165. *Id.*

166. *Id.*

167. O.C.G.A. § 19-9-123(a) (2018).

168. O.C.G.A. § 19-9-123(e) (2018).

169. O.C.G.A. § 19-9-124(a)–(b) (2018).

170. O.C.G.A. § 19-9-124(a)(1) (2018).

171. *Id.*

172. O.C.G.A. § 19-9-123(c)–(e) (2018).

power of attorney.¹⁷³ The noncustodial parent may object within twenty-one days of the delivery of notice.¹⁷⁴ Code section 19-9-126 provides that executing power of attorney does not constitute abandonment or neglect, though the Division of Family and Children Services may investigate any allegations of abuse, neglect, or abandonment.¹⁷⁵ In the event of an emergency, Code section 19-9-127 provides that a parent or agent may seek medical treatment for a child even when the child is in the custody of another individual at the parent's or agent's request.¹⁷⁶ However, parents may not exercise power of attorney simply to avoid a Division of Family and Children Services investigation.¹⁷⁷

A power of attorney must be signed under oath before a notary public and filed in the county where the child resides or to which the child is moving.¹⁷⁸ Each county probate court must maintain a docket that includes "the name of the agent, the name of the child, the date the power of attorney was deposited with the court, and the date the power of attorney expires, if applicable."¹⁷⁹ The power of attorney will exist for one year or less, unless otherwise authorized in Code section 19-9-132.¹⁸⁰ However, the individual who executes the power may revoke it in writing, and the revoking individual must provide notice to schools, healthcare providers, and the probate court.¹⁸¹ The child must be returned to the revoking individual within forty-eight hours of receiving notice, and the agent is also responsible for notifying others about the revocation.¹⁸² An agent may also resign in writing.¹⁸³

Power of attorney is not considered foster care or out-of-home child placement.¹⁸⁴ Power of attorney may only be given for more than one child at a time in the case of siblings or stepsiblings.¹⁸⁵

173. O.C.G.A. § 19-9-125(a) (2018).

174. O.C.G.A. § 19-9-125(b) (2018).

175. O.C.G.A. § 19-9-126(a), (d) (2018).

176. O.C.G.A. § 19-9-127 (2018).

177. O.C.G.A. § 19-9-128 (2018).

178. O.C.G.A. § 19-9-129(a) (2018).

179. O.C.G.A. § 19-9-129(b) (2018).

180. O.C.G.A. § 19-9-130(a)(1)(A) (2018).

181. O.C.G.A. § 19-9-130(a)(3) (2018).

182. O.C.G.A. § 19-9-130(a)(2), (c) (2018).

183. O.C.G.A. § 19-9-130(d) (2018).

184. O.C.G.A. § 19-9-131(a)-(b) (2018).

185. O.C.G.A. § 19-9-131(c) (2018).

Code section 19-9-132 provides grandparents an unlimited duration of power of attorney.¹⁸⁶ Similarly, an individual on active military service may delegate the power of attorney for a period exceeding one year, although within thirty days of the individual's return, the power of attorney will end.¹⁸⁷ Any power of attorney given to a grandparent that existed prior to September 1, 2018, will not be affected by the new provisions of HB 159.¹⁸⁸ Finally, Code section 19-9-134 provides a form that individuals must use when executing power of attorney.¹⁸⁹

Part III

Part III amends Code section 20-2-852.1, pertaining to adoptive maternity leave for school personnel. Section 3-1 adds the new Code section 20-2-852.1, which permits adoptive parents to request the same type of maternity leave as biological parents, according to school policy.¹⁹⁰ Furthermore, a school may use its discretion to grant additional leave to parents adopting an ill or disabled child, similar to leave granted when complications arise from birthing a child.¹⁹¹ This section will not apply to an adoption by a custodial parent's spouse, such as a stepparent.¹⁹²

Part IV

Section 4-1 states that the Act becomes effective on September 1, 2018, and Section 4-2 repeals all laws in conflict with the Act.

186. O.C.G.A. § 19-9-132(a) (2018).

187. O.C.G.A. § 19-9-132(b) (2018).

188. O.C.G.A. § 19-9-133 (2018).

189. O.C.G.A. § 19-9-134 (2018).

190. O.C.G.A. § 20-2-852.1 (Supp. 2018).

191. *Id.*

192. *Id.*

*Analysis**The Payment or Reimbursement of Expenses*

The Act allows a licensed child-placing agency or an attorney to pay or be reimbursed for a biological mother's medical expenses; counseling services; legal services; reasonable living expenses; reasonable expenses for rent, utilities, food, and maternity garments; and maternity accessories.¹⁹³ Additionally, the Act requires that each petitioner for adoption file a report accounting for all disbursements of anything of value made for counseling services or legal services for a legal mother; reasonable expenses for the biological mother; or medical or hospital care received by the biological mother or by the child during the mother's prenatal care and confinement.¹⁹⁴ These and other additions to the Act were a result of Georgia's poor adoption rate, which "lags behind the national average."¹⁹⁵ The adoption laws needed updating to make them "as friendly as possible to encourage birth mothers to place their children up for adoption in Georgia rather than go to other states."¹⁹⁶

There was disagreement between the House and Senate in regard to "living expenses of the birth mother when paid through private attorney adoptions."¹⁹⁷ The Senate had some concerns about whether payments by private attorneys would be "borderline giving improper inducements to parents to place their child for adoption."¹⁹⁸ The House had no problem with allowing these payments because "thirty-two states in the union have such provisions including every state contiguous to the state of Georgia."¹⁹⁹ Eventually, "the House made some changes to appease some of [the Senate's] concerns,"²⁰⁰ and

193. O.C.G.A. § 19-8-24(c)(1)(A)–(D) (2018).

194. O.C.G.A. § 19-8-13(c)(3)–(5) (Supp. 2018).

195. Mark Niese, *Why It's More Difficult to Adopt Children in Georgia*, ATLANTA J.-CONST. (Feb. 5, 2018, 7:30 AM), <https://politics.myajc.com/news/state—regional-govt—politics/why-more-difficult-adopt-children-georgia/N1fGhssXI4mDR1NBxz5tLP/> [<https://perma.cc/LR27-3BFP>].

196. *Id.*

197. Video Recording of Senate Day 15 at 2 hr., 5 min., 50 sec. (Feb. 5, 2018) (remarks by Sen. Jesse Stone (R-23rd)), <http://www.gpb.org/lawmakers/2018/day-15> [<https://perma.cc/36AT-ZRW9>] [hereinafter Senate Day 15 Video].

198. See *Lawmakers 2018* (GPTV broadcast, Feb. 5, 2018 Day 15) (remarks by Sen. Bill Cowser (R-46th)), <http://www.gpb.org/lawmakers/2018/day-15> [<https://perma.cc/36AT-ZRW9>].

199. Senate Day 15 Video, *supra* note 197.

200. *Lawmakers 2018*, *supra* note 198.

added a requirement that reasonable living expenses for rent, utilities, food, maternity garments, and maternity accessories be paid from “the trust account of an attorney who is a member of the State Bar of Georgia in good standing.”²⁰¹ Although the Senate was not completely satisfied by this language in the Act, it agreed to compromise and not delay passage of the bill.²⁰² In response to the Senate’s concerns regarding “how reasonable living expenses should be defined, what guidelines should be used, or the procedures by which they should be approved,” Senator Jesse Stone (R-23rd) announced that he intended to “file a joint Senate [and] House Study Committee resolution to study the issue of living expenses.”²⁰³ The Committee would “look at the experience after [they] passed [the] bill and . . . to the agencies that oversee this area.”²⁰⁴ The Senate’s main goals in studying the issue are to “keep adoption affordable for working families and to monitor abuse so that private attorneys do not proceed too closely to the line against unlawful inducements.”²⁰⁵

In studying this issue, the joint Senate and House Study Committee may look to surrounding states for guidance on how to regulate payments of living expenses. For example, in Florida, “[a]pproval of the court is required when the total amount of expenses . . . [exceeds] \$5,000 in reasonable and necessary living and medical expenses.”²⁰⁶ In North Carolina, “[l]iving expenses may not be paid beyond [six] weeks after the birth of the child.”²⁰⁷ In South Carolina, payments of living expenses are allowed for the birth mother and child for “a reasonable period of time.”²⁰⁸ Finally, in Tennessee, “[p]ayment of living expenses is not permitted, without court approval, beyond a reasonable period not to exceed [ninety] days prior to the birth of the child or [forty-five] days after the child’s birth or surrender for adoption.”²⁰⁹ With so many variations, the joint

201. O.C.G.A. § 19-8-24(c)(1)(D) (2018).

202. Senate Day 15 Video, *supra* note 197.

203. *Id.*

204. *Id.*

205. *Id.*

206. CHILD WELFARE INFO. GATEWAY, *Regulation of Private Domestic Adoption Expenses*, CHILDREN’S BUREAU 35, <https://www.childwelfare.gov/pubPDFs/expenses.pdf> [<https://perma.cc/TLG4-9TUV>].

207. *Id.*

208. *Id.*

209. *Id.*

Senate and House Study Committee will have numerous examples to research in determining what regulations will be best for the people of Georgia.

The Waiting Period

The Act allows an individual signing a surrender of rights to “revoke such surrender within four days.”²¹⁰ The four-day revocation period runs “consecutively beginning with the day immediately following the date the surrender of rights is executed.”²¹¹ The bill substantially limits the time an individual has to revoke a surrender of rights from ten days to four days.²¹² This limitation was one of the major changes the bill introduced to update Georgia adoption law.²¹³ Adoption advocates posit “[t]he adoption waiting period is one reason why [it is] more difficult in Georgia to create new families than in many other states.”²¹⁴ Supporters of a shorter revocation period acknowledge that a time limit for the birth mother to change her mind is important, but “[ten] days might be too long, creating unnecessary anxiety when a birth mother is committed to the adoption.”²¹⁵ To some adoptive parents, the ten-day waiting period can feel like ten years.²¹⁶ Perhaps in an effort to completely remove this anxiety, “the original House version gave them no time, where once the child was born then the mother couldn’t change her mind.”²¹⁷ Senator Bill Cowser (R-46th) stated that the House and Senate “reached a compromise that allows a birth mother up to four days to change her mind.”²¹⁸ He acknowledged the inevitably high emotions that arise after birth and stated “it would be best in most all cases for the natural biological parent[s] to raise their child if they are

210. O.C.G.A. § 19-8-9(a) (2018).

211. *Id.*

212. *Id.*

213. Ben Nadler, *Georgia Senate Passes Sweeping House Adoption Bill*, U.S. NEWS (Feb. 5, 2018, 5:18 PM), <https://www.usnews.com/news/best-states/georgia/articles/2018-02-05/georgia-senate-passes-sweeping-house-adoption-bill> [<https://perma.cc/FR9J-TT9P>].

214. Niese, *supra* note 195.

215. *Id.*

216. *Id.*

217. *Lawmakers 2018*, *supra* note 198.

218. *Id.*

able to do so.”²¹⁹ This important compromise may finally give Georgia adoptive parents peace of mind after the birth of the child, while still giving birth parents a fair chance to revoke a surrender of rights.

Power of Attorney

Regarding power of attorney, the Act allows the following:

A parent of a child may delegate to an agent in a power of attorney any power and authority regarding the care and custody of such child, except the power to consent to the marriage or adoption of such child, the performance or inducement of an abortion on or for such child, or the termination of parental rights to such child.²²⁰

One of the controversial provisions of this Code section is that “[s]uch power and authority may be delegated without the approval of a court.”²²¹ The Senate took this power of attorney provision from the vetoed HB 359 and added it to this Act to support parents who “find themselves in a position . . . where they need to be empowered to make the decisions that the language of HB 359 allows them to do, particularly military parents”²²² The Senate wanted to “allow parents to give another adult temporary power of attorney to help them raise their child while they were indisposed for whatever reason—a job transfer, military assignment overseas, [or] . . . going through an alcohol or drug rehabilitation program—rather than put the kid in a foster care program.”²²³ The House, in accordance with Governor Deal’s (R) concerns about the lack of oversight, added safe home provisions including a requirement to notify the probate courts, complete background checks, and “make certain that the best interests of the children are also protected.”²²⁴ The Act also limits the

219. *Id.*

220. O.C.G.A. § 19-9-124(a)(1) (2018).

221. *Id.*

222. Senate Day 15 Video, *supra* note 197, at 2 hr., 17 min., 49 sec. (remarks by Sen. Joshua McKoon (R-29th)).

223. *Lawmakers 2018*, *supra* note 198.

224. Video Recording of Senate Day 14 at 7 min., 26 sec. (Feb. 1, 2018 PM) (remarks by Sen. Bill

persons to whom a parent can delegate caregiving authority.²²⁵ The list includes “an adult, who resides in [the] state, and who is the grandparent, great-grandparent, stepparent, former stepparent, step-grandparent, aunt, uncle, great aunt, great uncle, cousin, or sibling.”²²⁶ If the agent is a nonrelative, she must be someone who is approved “by a child-placing agency or nonprofit entity or faith based organization for a period not to exceed one year.”²²⁷

The installation of HB 359 into the bill is a true product of compromise. The Senate wanted the power of attorney provision “very strongly,”²²⁸ while Governor Deal vetoed HB 359 in the 2017 Legislative Session “because he didn’t think it had enough oversight from government to make certain that the children were kept properly cared for.”²²⁹ The safe home provisions gave the “governor comfort that the children are put with good, responsible adults,” who are on record with the probate court.²³⁰ “[The] negotiation between the House, Senate and Governor [Deal]”²³¹ produced an Act that now allows parents the freedom to delegate caretaking authority in their absence while still fulfilling the responsibility of the State to oversee the care of Georgia’s children.

Takeaways

HB 159 significantly overhauled Georgia’s antiquated adoption laws. The Act greatly simplified the process to adopt children by shortening the period of revocation of parental rights, granting broader power of attorney, and reworking the process for domesticating foreign-born children, among other provisions. The legislature, motivated by loopholes in the previous adoption laws, made bipartisan efforts to encourage an increase in Georgia adoptions. With this legislation, children, just like the young Honduran boy in the 2007 Georgia Court of Appeals case, may find

Cowsert (R-46th)), <http://www.gpb.org/lawmakers/2018/day-14> [<https://perma.cc/29CW-YQPK>].

225. O.C.G.A. § 19-9-122 (2018).

226. *Id.*

227. *Id.*

228. *Lawmakers 2018*, *supra* note 198.

229. *Id.*

230. *Id.*

231. *Id.* (remarks by Rep. Deborah Gonzalez (D-117th)).

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it easier to receive the care they require, and adoptive parents and guardians will likely face fewer obstacles when it comes to welcoming a child into their home.

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