

House Bill 543 (AS PASSED HOUSE AND SENATE)

By: Representatives Efstration of the 104th, Oliver of the 82nd, Wilensky of the 79th, and Rich of the 97th

A BILL TO BE ENTITLED
AN ACT

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

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Article 1 of Chapter 7 of Title 19 of the Official Code of Georgia Annotated, relating to
9 general provisions regarding parent and child relationship generally is amended by adding
10 a new Code section to read as follows:

11 "19-7-3.1.

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

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

16 (1) File with the initial pleading an affidavit alleging under oath specific facts to support
17 the existence of an equitable caregiver relationship with the child as set forth in
18 subsection (d) of this Code section. The pleadings and affidavit shall be served upon all
19 parents and legal guardians of the child and any other party to the proceeding;

20 (2) An adverse party, parent, or legal guardian who files a pleading in response to the
21 pleadings in paragraph (1) of this subsection shall also file an affidavit in response,
22 serving all parties to the proceeding with a copy;

23 (3) The court shall determine on the basis of the pleadings and affidavits pursuant to
24 paragraphs (1) and (2) of this subsection whether such individual has presented prima
25 facie evidence of the requirements set forth in subsection (d) of this Code section. The

26 court may in its sole discretion, if necessary and on an expedited basis, hold a hearing to
 27 determine undisputed facts that are necessary and material to the issue of standing; and
 28 (4) If the court's determination under paragraph (3) of this subsection is in the
 29 affirmative, the party claiming to be an equitable caregiver has standing to proceed to
 30 adjudication under subsection (d) of this Code section.
 31 (c) A document substantially in the following form may be used to create a pleading and
 32 affidavit for purposes of paragraph (1) of subsection (d) of this Code section:

33 IN THE COURT OF COUNTY
 34 STATE OF GEORGIA

35 A.B.,
 36 _____)
 37 Plaintiff)
 38)
 39 v.) Civil Action
 40) File no. _____
 41 C.D.,
 42 _____)
 43 Defendant)

44 COMPLAINT

45 The defendant C.D., herein named, is a resident of _____ (street),
 46 _____, (city) _____ County, Georgia, and is subject to the
 47 jurisdiction of this court.

48 As of _____ (date), Plaintiff can fully demonstrate to the court that:

- 49 (1) Plaintiff has fully and completely undertaken a permanent, unequivocal,
 50 committed, and responsible parental role in the child's life;
- 51 (2) Engaged in consistent caretaking of the child;
- 52 (3) Established a bonded and dependent relationship with the child, the relationship
 53 was fostered or supported by a parent of the child, and such individual and the
 54 parent have understood, acknowledged, or accepted or behaved as though such
 55 individual is a parent of the child; and
- 56 (4) Accepted full and permanent responsibilities as a parent of the child without
 57 expectation of financial compensation.

58 The facts of the case are:

59 1. _____

60 2. _____

61 3. _____

62 4. _____

63 _____

64 Dated

Pro Se Applicant

65 _____

66 Address

67 _____

68 Address

69 (CERTIFICATE OF SERVICE)

70 'AFFIDAVIT OF PETITIONER

71 STATE OF GEORGIA

72 COUNTY OF _____

73 Personally appeared before me, the undersigned officer duly authorized to administer oaths,

74 _____, who, after having been sworn, deposes, and says as follows:

75 That my name is: _____

76 That my address is: _____

77 These are the facts to support the existence of an equitable caregiver relationship with a

78 child as set forth in subsection (c) of O.C.G.A. 19-7-3.1:

79 _____

80 Dated

Pro Se Applicant

81 _____

82 Address

83 _____

84 Address

85 Sworn to and subscribed

86 Before me this _____

87 Day of _____, _____.

88 _____

89 Notary public (SEAL)

90 My commission expires: _____

91 (d) In order to establish standing, the court shall first find, by clear and convincing
 92 evidence, that the individual has:

93 (1) Fully and completely undertaken a permanent, unequivocal, committed, and
 94 responsible parental role in the child's life;

95 (2) Engaged in consistent caretaking of the child;

96 (3) Established a bonded and dependent relationship with the child, the relationship was
 97 fostered or supported by a parent of the child, and such individual and the parent have
 98 understood, acknowledged, or accepted or behaved as though such individual is a parent
 99 of the child;

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

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

105 (e) In determining the existence of harm, the court shall consider factors related to the
 106 child's needs, including, but not limited to:

107 (1) Who are the past and present caretakers of the child;

108 (2) With whom has the child formed psychological bonds and the strength of those
 109 bonds;

110 (3) Whether competing parties evidenced an interest in, and contact with, the child over
 111 time; and

112 (4) Whether the child has unique medical or psychological needs that one party is better
 113 able to meet.

114 (f) A court may grant standing on an individual seeking to be adjudicated as an equitable
 115 caregiver on the basis of the consent of the child's parent for such individual to have a
 116 parental relationship with the child, or on the basis of a written agreement between the
 117 individual seeking to be adjudicated as an equitable caregiver and the child's parent,
 118 indicating an intention to share or divide caregiving responsibilities for the child.

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

- 121 (h) This Code section shall not authorize an original action when both parents of the minor
122 child are not separated and the child is living with both parents.
- 123 (i) This Code section shall not authorize an original action by an individual whose
124 relationship with the child was established as a result of a proceeding under Article 3 of
125 Chapter 11 of Title 15 and shall not authorize an original action so long as the Division of
126 Family and Children Services of the Department of Human Services has an open child
127 welfare and youth services case involving such child or his or her parent.
- 128 (j) The adjudication of a person under this Code section as an equitable caregiver does not
129 disestablish the parentage of any other parent."

130 **SECTION 2.**

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