The House Committee on Education offers the following substitute to SB 456:

A BILL TO BE ENTITLED

AN ACT

To amend Title 20 of the Official Code of Georgia Annotated, relating to education, so as to create the Department of Early Care and Learning as successor to the Office of School Readiness; to provide for the duties and powers of such department; to provide that such department shall be a separate budget unit; to define terms; to provide for a board; to provide for members and their appointment, terms, vacancies, officers, expenses, and duties; to provide for rules and regulations; to provide for a commissioner and such official´s appointment, compensation, and duties; to transfer to the department certain powers, duties, and functions relating to the regulation of child care and the quality of child care; to delete obsolete provisions; to protect the retirement rights of certain employees previously transferred; to provide for succession to rules, regulations, policies, procedures, and administrative orders of the Office of School Readiness; to provide for the transfer of assets and employees; to provide for succession to certain rules, regulations, policies, procedures, and administrative orders of the Department of Human Resources and the Georgia Child Care Council; to provide for licensing, commissioning, and registration of day-care centers, family day-care homes, child care learning centers, and group day-care homes; to restrict the department´s authority regarding the content of educational curriculum; to provide for exceptions; to provide for minimum space requirements; to provide for assistance in meeting the department´s rules and regulations; to provide for temporary licenses, commissions, and registrations; to provide for refusal to issue a license, registration, or commission; to provide for display of licenses, registrations, and commissions; to provide for the application of the "Georgia Administrative Procedure Act"; to provide for inspection of early care and education programs; to provide for periodic reports; to provide for the misdemeanor offense of operating an early care and education program without a license, commission, or registration; to provide for injunctions; to provide for civil penalties, notice, opportunity to show in writing why a civil penalty should not be imposed, appeal, and collection; to authorize penalties for material misrepresentations, failure to provide access, failure to comply with licensing requirements, and violations; to provide for investigations; to provide for assessment of expenses; to provide for immunity; to provide for emergency monitors and

procedures for orders and preliminary hearings; to authorize variances and waivers from rules and regulations; to provide for inspection warrants and the conditions for their issuance, the form and contents of such warrants, and to provide that evidence discovered pursuant to an inspection warrant is not competent as evidence in criminal proceedings; to provide for assistance from other state departments, agencies, officers, and employees; to authorize transfer of certain functions from the Department of Education; to provide for requirements relating to criminal records checks for directors and employees of centers; to amend Chapter 5 of Title 49 of the Official Code of Georgia Annotated, relating to programs and protection for children, so as to redesignate and transfer to Chapter 1A of Title 20 of the Official Code of Georgia Annotated, relating to the Office of School Readiness, provisions relating to the Georgia Child Care Council; to revise provisions relating to the membership of the council; to delete provisions relating to the director of the council, the council´s attachment to the Department of Human Resources for administrative purposes, and funding for costs of the council; to provide that the council shall advise the Board and Commissioner of Early Care and Learning; to provide for duties of the lead agency and the department relating to federal funding and improvement of the quality, availability, and affordability of child care; to delete provisions relating to regulation of day-care centers, family day-care homes, and group day-care homes; to revise the duties of the Department of Human Resources relating to regulation of child-placing agencies, child-caring institutions, and maternity homes; to provide that commissioned child welfare agencies operate in accordance with the same rules and regulations as licensed child welfare agencies; to provide for refusing a license or commission to a child welfare agency; to delete a provision relating to employment of persons who have been convicted of specified offenses; to revise a provision relating to criminal records checks for emergency temporary employees, foster parents, and adults residing in a foster care home; to amend Code Section 25-2-13 of the Official Code of Georgia Annotated, relating to buildings presenting special hazards, Code Section 42-1-12 of the Official Code of Georgia Annotated, relating to registration of sexually violent predators, and Code Section 48-7-40.6 of the Official Code of Georgia Annotated, relating to tax credits for employers providing child care, in conformity with the creation of the new department and the transfer to it of duties relating to the regulation of child care; to amend various provisions of the Official Code of Georgia Annotated in conformity with the name of the new department; to provide for effective dates; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 20 of the Official Code of Georgia Annotated, relating to education, is amended by striking Chapter 1A, relating to the Office of School Readiness, and inserting in lieu thereof the following:

″CHAPTER 1A

ARTICLE 1

20-1A-1.

The ~~Office of School Readiness~~ Department of Early Care and Learning is created as a department of the executive branch of state government~~, and said office~~ and shall have the duties, responsibilities, functions, powers, and authority set forth in this chapter and otherwise provided by law. ~~The Office of School Readiness shall be assigned for administrative purposes only, as that term is defined in Code Section 50-4-3, to the Department of Education.~~ The Department of Early Care and Learning is the successor to the Office of School Readiness and shall have the duties, responsibilities, functions, powers, authority, employees, office equipment, furniture, and other assets formerly held by the Office of School Readiness. The Department of Early Care and Learning shall be a separate budget unit.

20-1A-2.

As used in this chapter, the term:

~~(1) 'Director' means the director of the Office of School Readiness.~~

~~(2) 'Office' means the Office of School Readiness.~~

(1) 'Board' means the Board of Early Care and Learning.

(2) 'Child care learning center' means a day-care center that participates in Georgia´s Pre-K Program.

(3) 'Commissioner' means the commissioner of the Department of Early Care and Learning.

(4) 'Day-care center' means any place operated by a person, society, agency, corporation, institution, or group wherein are received for pay for group care for less than 24 hours per day, without transfer of legal custody, 19 or more children under 18 years of age.

(5) 'Department' means the Department of Early Care and Learning.

(6) 'Early care and education programs' include all family day-care homes, group day-care homes, day-care centers, and child care learning centers.

(7) 'Early childhood' means the period of childhood from birth to age six.

(8) 'Family day-care home' means a private residence operated by any person who receives therein for pay for supervision and care fewer than 24 hours per day, without transfer of legal custody, at least three but not more than six children under 18 years of age who are not related to such person and whose parents or guardians are not residents in the same private residence.

(9) 'Group day-care home' means any place operated by any person or group wherein are received for pay not less than seven nor more than 18 children under 18 years of age for care and supervision for less than 24 hours per day.

20-1A-3.

(a) There is created a Board of Early Care and Learning and a commissioner of early care and learning.

(b) The board shall consist of one member from each congressional district appointed by the Governor. In as far as it is practical, the members of the board shall be representative of all areas and functions encompassed within the early childhood care and education community. In appointing members to their initial terms, the Governor shall designate five members for two-year terms, four members for three-year terms, and four members for five-year terms. Subsequent appointments shall be for five-year terms. Members shall serve until their successors are appointed. In the event of a vacancy on the board for any reason other than expiration of a term, the Governor shall appoint a person from the same congressional district to fill the vacancy for the unexpired term.

(c) The board shall elect from its members a chairperson and such other officers as the board considers necessary. The board shall adopt bylaws for the conduct of its activities. The members of the board shall receive per diem and expense reimbursement as shall be determined and approved by the Office of Planning and Budget in conformity with rates and allowances determined for members of other state boards.

(d) The board shall determine policies and promulgate rules and regulations for the operation of the department including:

(1) Functions formerly performed by the Office of School Readiness, including, but not limited to, Even Start;

(2) Functions transferred to the department from the Department of Human Resources relating to day-care centers, group day-care homes, family day-care homes, and other functions as agreed upon by the department and the Department of Human Resources in accordance with Code Section 20-1A-8;

(3) Functions transferred to the department from the Georgia Child Care Council pursuant to Code Section 20-1A-63; and

(4) Functions relating to early childhood education programs transferred from the Department of Education by agreement in accordance with Code Section 20-1A-17.

(e) The board shall oversee the budget of the department and shall submit an annual request for funding to the Office of Planning and Budget in accordance with Code Section 45-12-78.

(f) The commissioner shall be the chief administrative and executive officer of the ~~office shall be the director, who~~ department. The commissioner shall be appointed by and serve at the pleasure of the Governor. ~~The director shall be responsible for the performance and exercise of the duties, responsibilities, functions, powers, and authority imposed upon the director and the office by law.~~ The ~~director~~ commissioner shall be in the unclassified service of the state merit system and shall receive a salary to be determined by the Governor.

~~(b)~~(g) The ~~director~~ commissioner shall have the authority to employ all personnel of the ~~office~~ department, subject to the provisions of this chapter, ~~and~~ all applicable provisions of other laws governing public employment, and the policies, procedures, rules, and regulations of the board.

~~(c) The director shall promulgate rules and regulations and establish procedures to carry out the provisions of this chapter.~~

20-1A-4.

The ~~Office of School Readiness~~ Department of Early Care and Learning shall have the following powers and duties:

(1) To administer such programs and services as may be necessary for the operation and management of voluntary pre-kindergarten, which shall be known as 'Georgia´s Pre-K Program';

(2) To administer such programs and services as may be necessary for the operation and management of preschool and child development programs, such as Even Start and child care regulation and food programs;

(3) To act as the agent of the federal government in conformity with this chapter and the administration of any federal funds granted to the state to aid in the furtherance of any functions of the ~~office; and~~ department;

(4) To assist local units of administration in this state so as to assure the proliferation of services under this chapter;

(5) To regulate early care and education programs in accordance with this chapter;

(6) To perform the functions set out in Code Section 20-1A-64, relating to improvement of the quality, availability, and affordability of child care in this state;

(7) To serve as the Head Start state collaboration office;

(8) To perform any other functions as agreed upon between the department and the Department of Human Resources, pursuant to Code Section 20-1A-8;

(9) To perform any other functions as agreed upon between the department and the Department of Education, in accordance with Code Section 20-1A-17; and

(10) To exercise the powers reasonably necessary to accomplish the purposes of this chapter, including, but not limited to, contracting for services.

20-1A-5.

~~(a) Effective April 15, 1996, the Office of School Readiness shall carry out all of the functions and exercise all of the powers formerly held by the Department of Education for the operation and management of the pre-kindergarten, Even Start, and child care food programs. Subject to subsection (c) of this Code section, all persons employed by and positions authorized for the Department of Education to perform these functions on April 14, 1996, shall, on April 15, 1996, be transferred to the Office of School Readiness. All office equipment, furniture, and other assets in possession of the Department of Education which are used or held exclusively or principally by personnel transferred under this subsection shall be transferred to the Office of School Readiness on April 15, 1996.~~

~~(b) Effective April 15, 1996, the Office of School Readiness shall carry out all of the functions and exercise all of the powers formerly held by the Department of Human Resources for the operation and management of child care regulation services. Subject to subsection (c) of this Code section, all persons employed by and positions authorized for the Department of Human Resources to perform functions relating to the licensure and certification of pre-kindergarten programs on April 14, 1996, shall, on April 15, 1996, be transferred to the Office of School Readiness. All office equipment, furniture, and other assets in possession of the Department of Human Resources which are used or held exclusively or principally by personnel transferred under this subsection shall be transferred to the Office of School Readiness on April 15, 1996.~~

~~(c) All transfers of employees and assets provided for in subsections (a) and (b) of this Code section shall be subject to the approval of the director, and such personnel or assets shall not be transferred if the director determines that a specific employee or asset should remain with the transferring agency.~~

~~(d) Employees of the office shall serve in the unclassified service of the state merit system as defined by Code Section 45-20-6. Persons who have transferred to the office pursuant to subsection (a) or (b) of this Code section who are in the classified service of the state merit system at the time of the transfer may elect to remain in such classified service and be governed by the provisions thereof; provided, however, that if any such person accepts~~

~~a promotion or transfers to another position, that person shall become an employee in the unclassified service.~~

~~(e) All employees of the Office of School Readiness who are employed after April 15, 1996, shall become members of the Employees´ Retirement System of Georgia consistent with the provisions of Code Section 47-2-70.1.~~

~~(f) Persons who are transferred to the Office of School Readiness pursuant to subsection (a) or (b) of this Code section who are members of the Employees´ Retirement System of Georgia created in Chapter 2 of Title 47 or the Teachers Retirement System of Georgia created in Chapter 3 of Title 47 can elect to continue membership in the same retirement system in which such person already is a member in accordance with applicable laws, rules, and regulations. All rights, credits, and funds in any such retirement system which are possessed by state personnel transferred by provisions of this chapter to the Office of School Readiness, or otherwise held by persons at the time of employment with the Office of School Readiness, are continued and preserved, it being the intention of the General Assembly that such persons shall not lose any rights, credits, or funds to which they may be entitled prior to becoming employees of the Office of School Readiness, unless such persons fail to elect to continue membership in the same retirement system in which such persons already are members. Once such election is made by such personnel, the election is irrevocable during the tenure of employment with the Office of School Readiness. Except as provided in this subsection, no employment benefit of any employee transferring to the Office of School Readiness shall be impaired.~~

~~(g) Funding for functions and positions transferred to the Office of School Readiness under this chapter shall be transferred as provided in Code Section 45-12-90.~~

This chapter shall not be construed to impair or affect the rights of persons previously transferred to the Office of School Readiness who were members of the Teachers Retirement System of Georgia created in Chapter 3 of Title 47 and who elected to continue membership in such retirement system in accordance with previous law.

20-1A-6.

~~The Office of School Readiness shall succeed to all rules, regulations, policies, procedures, and administrative orders of the Department of Education or Department of Human Resources, where applicable, which are in effect on April 15, 1996, and which relate to the functions transferred to the department. Such rules, regulations, policies, and procedures shall remain in effect until amended, repealed, superseded, or nullified by the director.~~

The department shall succeed to all rules, regulations, policies, procedures, and pending and finalized administrative orders of the Office of School Readiness which are in effect on September 30, 2004. Such rules, regulations, policies, and procedures shall remain in

effect until amended, repealed, superseded, or nullified by the board or commissioner, as applicable.

20-1A-7.

~~On and after July 1, 2002, each~~ Each newly printed publication, poster, banner, or sign created for the pre-kindergarten program by the ~~Office of School Readiness~~ department or a provider of pre-kindergarten services shall refer to the program as 'Georgia´s Pre-K Program.'

20-1A-8.

(a) Effective October 1, 2004, the department shall carry out all of the functions and exercise all of the powers formerly held by the Department of Human Resources for the regulation and licensure of early care and education programs and any other functions as agreed upon by the department and the Department of Human Resources. Subject to subsection (c) of this Code section, all persons employed by and positions authorized for the Department of Human Resources to perform functions relating to the licensure and certification of early care and education programs and any other functions as agreed upon by the department and the Department of Human Resources on September 30, 2004, shall on October 1, 2004, be transferred to the department. All office equipment, furniture, and other assets in possession of the Department of Human Resources which are used or held exclusively or principally by personnel transferred under this subsection shall be transferred to the department on October 1, 2004.

(b) Effective October 1, 2004, notwithstanding the advisory functions of the Georgia Child Care Council included in Code Section 20-1A-63, the department shall carry out the functions and exercise the powers formerly held by the Georgia Child Care Council under former Article 11 of Chapter 5 of Title 49. Subject to subsection (c) of this Code section, all persons employed by and positions authorized for the Georgia Child Care Council to perform functions relating to the recommendation of measures to improve the quality, availability, and affordability of child care in this state on September 30, 2004, shall on October 1, 2004, be transferred to the department. All office equipment, furniture, and other assets in possession of the Georgia Child Care Council or the Department of Human Resources which are used or held exclusively or principally by personnel transferred under this subsection shall be transferred to the department on October 1, 2004.

(c) All transfers of employees and assets provided for in subsections (a) and (b) of this Code section shall be subject to the approval of the commissioner, and such personnel or assets shall not be transferred if the commissioner determines that a specific employee or asset should remain with the transferring agency.

(d) Employees of the department shall serve in the unclassified service of the state merit system as defined by Code Section 45-20-6. Persons who have transferred to the department pursuant to subsections (a) and (b) of this Code section who are in the classified service of the state merit system at the time of the transfer may elect to remain in such classified service and be governed by the provisions thereof; provided, however, that if any such person accepts a promotion or transfers to another position, that person shall become an employee in the unclassified service.

(e) All rights, credits, and funds in the Employees´ Retirement System of Georgia created in Chapter 2 of Title 47 which are possessed by state personnel transferred by provisions of this Code section to the department, or otherwise held by persons at the time of employment with the department, are continued and preserved, it being the intention of the General Assembly that such persons shall not lose any rights, credits, or funds to which they may be entitled prior to becoming employees of the department. No employment benefit of any employee transferring to the department shall be impaired.

(f) Funding for functions and positions transferred to the department under this Code section shall be transferred as provided in Code Section 45-12-90.

20-1A-9.

The department shall succeed to all rights and responsibilities relating to licensure and regulation of day-care centers, group day-care homes, and family day-care homes, including such rules, regulations, policies, procedures, and pending and finalized administrative orders of the Department of Human Resources, the Georgia Child Care Council, and the Office of State Administrative Hearings, where applicable, which are in effect on September 30, 2004, and which relate to the functions transferred to the department pursuant to Code Section 20-1A-8. Such rights, responsibilities, licenses issued pursuant to previous law, procedures, and orders shall remain in effect until amended, repealed, superseded, or nullified by the commissioner. Such rules, regulations, and policies shall remain in effect until amended, repealed, superseded, or nullified by the board.

20-1A-10.

(a) The department is authorized and empowered to establish, maintain, extend, and improve throughout the state, within the limits of funds appropriated for such purposes, the regulation of early care and education programs by providing consultation and making recommendations concerning establishment and implementation of such programs and by licensing and inspecting periodically all such programs to ensure their adherence to this chapter and rules and regulations promulgated by the board.

(b) Day-care centers and child care learning centers operated as part of a local church ministry or a nonprofit religious school or a nonprofit religious charitable organization may notify the department annually and be commissioned in lieu of being licensed upon request for commission. Commissioned day-care centers and child care learning centers shall operate in accordance with the same procedures, standards, rules, and regulations which are established by the board for the operation of licensed day-care centers and child care learning centers. Any day-care center or child care learning center operated as part of a local church ministry or a nonprofit religious school or a nonprofit religious charitable organization may elect to apply for a commission as provided for in subsection (c) of this Code section.

(c) All early care and education programs shall be licensed or commissioned annually by the department in accordance with procedures, standards, rules, and regulations to be established by the board; provided, however, that the department may require persons who operate family day-care homes to register with the department.

(d) The department shall publish and make available to early care and education programs and interested persons a list of guidelines for quality child care.

(e) After an early care and education program has been licensed, commissioned, or registered by the department as provided in this chapter, the program shall not be required to have a permit to operate a food service establishment as required in Code Section 26-2-371, provided that rules and regulations for food service have been incorporated in the regulations for licensing, commissioning, or registering such programs.

(f) The department shall not be authorized to prescribe, question, or regulate the specific content of educational curriculum taught by an early care and education program, except to the extent that a program operates Georgia´s Pre-K Program or any other voluntary educational program administered by the department.

(g) Persons who operate early care and education programs shall be required to post in a conspicuous place next to telephones in the home or center the telephone numbers of the nearest or applicable providers of emergency medical, police, and fire services.

(h) Persons who operate early care and education programs shall post signs prohibiting smoking to carry out the purposes of paragraph (4) of subsection (a) of Code Section 16-12-2.

(i) Group day-care homes, day-care centers, and child care learning centers shall provide a minimum of 35 square feet of usable space consisting of indoor play areas, rest areas, and dining facilities for each child present in the facility. Day-care centers and child care learning centers will be allowed to designate in writing to the department two one-hour periods daily during which 25 square feet of usable space per child for children aged three years and older may be provided. Notwithstanding the limitation to 18 children prescribed

in Code Section 20-1A-2, group day-care homes will be allowed to designate in writing to the department two one-hour periods daily during which 25 square feet of usable space per child for children aged three years and older may be provided. Notwithstanding the limitation to six children prescribed in Code Section 20-1A-2, a family day-care home operator may care for two additional children aged three years and older for two designated one-hour periods daily. Notwithstanding the provisions of this subsection, all other applicable rules and regulations shall apply.

(j) The department shall assist applicants, licensees, registrants, or persons holding commissions in meeting rules and regulations of the department for early care and education programs.

(k) Application for a license, commission, or registration for an early care and education program shall be made to the department upon forms furnished by the department. Upon receipt of an application for a license, registration, or commission and upon presentation by the applicant of evidence that the early care and education program meets the rules and regulations prescribed by the department, the department shall issue such early care and education program a license, registration, or commission for a one-year period.

(l) If the department finds that any early care and education program applicant does not meet rules and regulations prescribed by the department but is attempting to meet such rules and regulations, the department may, in its discretion, issue a temporary license, registration, or commission to such early care and education program, but such temporary license, registration, or commission shall not be issued for more than a one-year period. Upon presentation of satisfactory evidence that such program is making progress toward meeting prescribed rules and regulations of the department, the department may, in its discretion, reissue such temporary license, registration, or commission for one additional period not to exceed one year. As an alternative to a temporary license, registration, or commission, the department, in its discretion, may issue a restricted license, registration, or commission which states the restrictions on its face.

(m) The department shall refuse to issue a license, registration, or commission upon a showing of:

(1) Noncompliance with the rules and regulations for day-care centers, family day-care homes, group day-care homes, or child care learning centers which are designated in writing to the facilities as being related to children´s health and safety;

(2) Flagrant and continued operation of an unlicensed, unregistered, or uncommissioned facility in contravention of the law; or

(3) Prior license, registration, or commission denial or revocation within one year of application.

(n) All licensed, registered, or commissioned early care and education programs shall prominently display the license, registration, or commission issued to such program by the department at some point near the entrance of the premises of such program that is open to view by the public.

(o) The department´s action revoking or refusing to renew or issue a license, registration, or commission required by this Code section shall be preceded by notice and opportunity for a hearing and shall constitute a contested case within the meaning of Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' except that only 30 days´ notice in writing from the commissioner´s designee shall be required prior to license, registration, or commission revocation and except that hearings held relating to such action by the department may be closed to the public if the hearing officer determines that an open hearing would be detrimental to the physical or mental health of any child who will testify at that hearing.

(p) It shall be the duty of the department to inspect at regular intervals all licensed, registered, or commissioned early care and education programs within the state. The department shall have right of entrance, privilege of inspection, and right of access to all children under the care and control of the licensee, registrant, or commissionee.

(q) If any flagrant abuses, derelictions, or deficiencies are made known to the department or its duly authorized agents during their inspection of any early care and education program or if, at any time, such are reported to the department, the department shall immediately investigate such matters and take such action as conditions may require.

(r) If abuses, derelictions, or deficiencies are found in the operation and management of any early care and education program, they shall be brought immediately to the attention of the management of such program; and if correctable, but not corrected within a reasonable time, the department shall revoke the license, registration, or commission of such program in the manner prescribed in this Code section.

(s) The department may require periodic reports from early care and education programs in such forms and at such times as the department may prescribe.

(t) Any person who shall operate an early care and education program without a license, registration, or commission issued by the department shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than $50.00 nor more than $200.00 for each such offense. Each day of operation without a license, registration, or commission shall constitute a separate offense.

(u) The department may, without regard to the availability of other remedies, including administrative remedies, seek an injunction against the continued operation of an early care and education program without a license, registration, or commission or the continued

operation of an early care and education program in willful violation of this chapter or of any regulation of the department or of any order of the department.

(v) The term 'licensed day-care center' shall include a commissioned day-care center and commissioned child care learning center and any references in this Code to a licensed day-care center, including criminal, administrative, and civil provisions applicable to licensed day-care centers, shall include and apply to commissioned day-care centers and commissioned child care learning centers unless otherwise provided in this Code section.

20-1A-11.

(a) Any person who violates the provisions of Code Section 20-2A-10 or who hinders, obstructs, or otherwise interferes with any representative of the department in the discharge of that person´s official duties in making inspections as provided in such Code section or in investigating complaints as provided in such Code section shall be guilty of a misdemeanor.

(b)(1) Any person who:

(A) Violates any licensing, commissioning, or registration provision of this chapter or any rule, regulation, or order issued under this chapter or any term, condition, or limitation of any license, commission, or registration certificate under this chapter thereby subjecting a child in care to injury or a life-threatening situation; or

(B) Commits any violation for which a license, commission, or registration certificate may be revoked under rules or regulations issued pursuant to this chapter

may be subject to a civil penalty, to be imposed by the department, not to exceed $500.00. If any violation is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing the applicable civil penalty.

(2) Whenever the department proposes to subject a person to the imposition of a civil penalty under this subsection, it shall notify such person in writing:

(A) Setting forth the date, facts, and nature of each act or omission with which the person is charged;

(B) Specifically identifying the particular provision or provisions of the Code section, rule, regulation, order, license, commission, or registration certificate involved in the violation; and

(C) Advising of each penalty which the department proposes to impose and its amount.

Such written notice shall be sent by registered or certified mail or statutory overnight delivery by the department to the last known address of such person. The person so notified shall be granted an opportunity to show in writing, within such reasonable period as the department shall by rule or regulation prescribe, why such penalty should not be imposed. The notice shall also advise such person that, upon failure to pay the civil

penalty subsequently determined by the department, if any, the penalty may be collected by civil action. Any person upon whom a civil penalty is imposed may appeal such action pursuant to Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'

(3) A civil penalty finally determined under this Code section may be collected by civil action in the event that such penalty is not paid as required. On the request of the department, the Attorney General is authorized to institute a civil action to collect a penalty imposed pursuant to this subsection. The Attorney General shall have the exclusive power to compromise, mitigate, or remit such civil penalties as are referred to the Attorney General for collection.

(4) All moneys collected from civil penalties shall be paid to the state for deposit in the general fund.

20-1A-12.

(a) This Code section shall be applicable to any early care and education program which is subject to regulation by the department in accordance with this chapter. For purposes of this Code section, the term 'license' shall be used to refer to any license, registration, or commission issued by the department pursuant to the provisions of this chapter.

(b) The department shall have the authority to take any of the actions enumerated in subsection (c) of this Code section upon a finding that the applicant or holder of a license has:

(1) Knowingly made any false statement of material information in connection with the application for a license, or in statements made or on documents submitted to the department as part of an inspection, survey, or investigation, or in the alteration or falsification of records maintained by the early care and education program;

(2) Failed or refused to provide the department with access to the premises subject to regulation or information pertinent to the initial or continued licensing of the program;

(3) Failed to comply with the licensing requirements of this state; or

(4) Failed to comply with any provisions of this Code section.

(c) When the department finds that any applicant or holder of a license has violated any provision of subsection (b) of this Code section or laws, rules, regulations, or formal orders related to the initial or continued licensing of the program, the department, subject to notice and opportunity for hearing, may take any of the following actions:

(1) Refuse to grant a license; provided, however, that the department may refuse to grant a license without holding a hearing prior to taking such action;

(2) Administer a public reprimand;

(3) Suspend any license for a definite period or for an indefinite period in connection with any condition which may be attached to the restoration of said license;

(4) Prohibit any applicant or holder of a license from allowing a person who previously was involved in the management or control, as defined by rule, of any program which has had its license revoked or denied within the past 12 months to be involved in the management or control of such program;

(5) Revoke any license;

(6) Impose a fine, not to exceed a total of $25,000.00, of up to $500.00 per day for each violation of a law, rule, regulation, or formal order related to the initial or ongoing licensing of any program; or

(7) Limit or restrict any license as the department deems necessary for the protection of the public, including, but not limited to, restricting some or all services of or admissions into a program for a time certain.

In taking any of the actions enumerated in this subsection, the department shall consider the seriousness of the violation, including the circumstances, extent, and gravity of the prohibited acts, and the hazard or potential hazard created to the health or safety of the public.

(d) The department may deny a license or otherwise restrict a license for any applicant who has had a license denied, revoked, or suspended within one year of the date of an application or who has transferred ownership or governing authority of a program subject to regulation by the department within one year of the date of a new application when such transfer was made in order to avert denial, revocation, or suspension of a license.

(e) With regard to any contested case instituted by the department pursuant to this Code section or other provisions of law which may now or hereafter authorize remedial or disciplinary grounds and action, the department may, in its discretion, dispose of the action so instituted by settlement. In such cases, all parties, successors, and assigns to any settlement agreement shall be bound by the terms specified in such agreement and violation of such agreement thereof by any applicant or holder of a license shall constitute grounds for any action enumerated in subsection (c) of this Code section.

(f) The department shall have the authority to make public or private investigations or examinations inside or outside of this state to determine whether the provisions of this Code section or any other law, rule, regulation, or formal order relating to the licensing of a program has been violated. Such investigations may be initiated at any time, in the discretion of the department, and may continue during the pendency of any action initiated by the department pursuant to subsection (c) of this Code section.

(g) For the purpose of conducting any investigation, inspection, or survey, the department shall have the authority to require the production of any books, records, papers, or other information related to the initial or continued licensing of any program.

(h) Pursuant to the investigation, inspection, and enforcement powers given to the department by this Code section and other applicable laws, the department may assess against a program reasonable and necessary expenses incurred by the department pursuant to any administrative or legal action required by the failure of the program to fully comply with the provisions of any law, rule, regulation, or formal order related to the initial or continued licensing. Assessments shall not include attorney´s fees and expenses of litigation, shall not exceed other actual expenses, and shall only be assessed if such investigations, inspections, or enforcement actions result in adverse findings, as finally determined by the department, pursuant to administrative or legal action.

(i) For any action taken or any proceeding held under this Code section or under color of law, except for gross negligence or willful or wanton misconduct, the department, when acting in its official capacity, shall be immune from liability and suit to the same extent that any judge of any court of general jurisdiction in this state would be immune.

(j) In an administrative or legal proceeding under this Code section, a person or entity claiming an exemption or an exception granted by law, rule, regulation, or formal order has the burden of proving this exemption or exception.

(k) This Code section and all actions resulting from its provisions shall be administered in accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'

(l) The provisions of this Code section shall be supplemental to and shall not operate to prohibit the department from acting pursuant to those provisions of law which may now or hereafter authorize remedial or disciplinary grounds and action for the department. In cases where those other provisions of law so authorize other disciplinary grounds and actions, but this Code section limits such grounds or actions, those other provisions shall apply.

(m) The board is authorized to promulgate rules and regulations to implement the provisions of this Code section.

20-1A-13.

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

(1) 'Emergency order' or 'order' means a written directive by the commissioner or the commissioner´s designee placing a monitor in an early care and education program.

(2) 'Monitor' means a person designated by the department to remain on-site in a program as an agent of the department, observing conditions.

(3) 'Preliminary hearing' means a hearing held by the department as soon as possible after the order is entered at the request of a program which has been affected by an emergency order placing a monitor in the program in accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'

(b) The commissioner or his or her designee may order the emergency placement of a monitor or monitors in an early care and education program upon a finding that rules and regulations of the department are being violated which threaten the health, safety, or welfare of children in the care of the program and when one or more of the following conditions are present:

(1) The program is operating without a license, commission, or registration;

(2) The department has denied application for license, registration, or commission or has initiated action to revoke the existing license, registration, or commission of the program; or

(3) Children are suspected of being subjected to injury or life-threatening situations or the health or safety of a child or children is in danger.

(c) A monitor may be placed in a program for no more than ten consecutive calendar days, during which time the monitor shall observe conditions and regulatory compliance with any recommended remedial action of the department. Upon expiration of the ten-day period, should the conditions warrant, the initial ten-day period may be extended for an additional ten-day period. The monitor shall report to the department. The monitor shall not assume any administrative responsibility within the program, nor shall the monitor be liable for any actions of the program. The salary and related costs and travel and subsistence allowance as defined by department policy of placing a monitor in a program shall be reimbursed to the department by the program, unless the order placing the monitor is determined to be invalid in a contested case or by final adjudication by a court of competent jurisdiction, in which event the cost shall be paid by the department.

(d) An emergency order shall contain the following:

(1) The scope of the order;

(2) The reasons for the issuance of the order;

(3) The effective date of the order if other than the date the order is issued;

(4) The person to whom questions regarding the order are to be addressed; and

(5) Notice of the right to a preliminary hearing.

(e) Unless otherwise provided in the order, an emergency order shall become effective upon its service. Service of an emergency order may be made upon the owner of the facility, the director of the facility, or any other agent, employee, or person in charge of the facility at the time of the service of the order.

(f) A request for a preliminary hearing shall be made in writing within five days from the time of service, excepting weekends. The request must be made to the representative of the department designated in the order. Unless a request is made to appear in person, the preliminary hearing shall consist of an administrative review of the record, written

evidence submitted by the early care and education program affected, and a preliminary written argument in support of its contentions.

(g) If a request is made to appear in person at the preliminary hearing, the program shall provide the name and address of the person or persons, if any, who will be representing the program in the preliminary hearing.

(h) Upon receipt of a request for a preliminary hearing, the department shall set and give notice of the date, time, and location of the preliminary hearing. The preliminary hearing shall be held as soon as possible after a request therefor but in no event later than 72 hours after such request, provided that a program may request that such hearing be held earlier and that in no event shall a hearing be held on a weekend or holiday.

(i) If a personal appearance is requested, the preliminary hearing shall consist of a review of the evidence in the record, any additional evidence introduced at the hearing, and any arguments made. A recording shall be made of the hearing.

(j) The department shall, where practicable, issue an immediate oral order and shall, in all instances, issue a written order within four business days after the close of the hearing.

(k) Pending final appeal of the validity of any emergency order issued as provided in this Code section, such emergency order shall remain in full effect until vacated or rescinded by the commissioner or the commissioner´s designee.

(l) The department is not precluded from other actions permitted by other laws or regulations during the time an emergency order is in force.

20-1A-14.

(a) The department upon application or petition may grant variances and waivers to specific rules and regulations which establish standards for early care and education programs regulated by the department as follows:

(1) The department may authorize departure from the literal requirements of a rule or regulation by granting a variance upon a showing by the applicant or petitioner that the particular rule or regulation that is the subject of the variance request should not be applied as written because strict application would cause undue hardship. The applicant or petitioner additionally must show that adequate standards affording protection of health, safety, and care exist and will be met in lieu of the exact requirements of the rule or regulation in question;

(2) The department may dispense entirely with the enforcement of a rule or regulation by granting a waiver upon a showing by the applicant or petitioner that the purpose of the rule or regulation is met through equivalent standards affording equivalent protection of health, safety, and care;

(3) The department may grant waivers and variances to allow experimentation and demonstration of new and innovative approaches to delivery of services upon a showing by the applicant or petitioner that the intended protections afforded by the rule or regulation which is the subject of the request are met and that the innovative approach has the potential to improve service delivery;

(4) Waivers or variances which affect an entire class of programs may only be approved by the board and shall be for a time certain, as determined by the board. A notice of the proposed variance or waiver affecting an entire class of programs shall be made in accordance with the requirements for notice of rule making in Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act'; or

(5) Variances or waivers which affect only one program in a class may be approved or denied by the department and shall be for a time certain, as determined by the department. The department shall maintain a record of such action and shall make this information available to the board and all other persons who request it.

(b) The department may exempt classes of programs from regulation when, in the department´s judgment, regulation would not permit the purpose intended or the class of programs is subject to similar requirements under other rules and regulations. Such exemptions shall be provided in rules and regulations promulgated by the board.

20-1A-15.

(a) As used in this chapter, the term 'inspection warrant' means a warrant authorizing a search or inspection of private property where such a search or inspection is one that is necessary for the enforcement of any of the provisions of laws authorizing licensure, inspection, or regulation by the department.

(b) The commissioner or the commissioner´s delegate, in addition to other procedures now or hereafter provided, may obtain an inspection warrant under the conditions specified in this Code section. Such warrant shall authorize the commissioner or the commissioner´s agents to conduct a search or inspection of property, either with or without the consent of the person whose property is to be searched or inspected, if such search or inspection is one that is elsewhere authorized under the rules and regulations duly promulgated under this chapter or any provision of law which authorizes licensure, inspection, or regulation by the department.

(c) Inspection warrants shall be issued only by a judge of a court of record whose territorial jurisdiction encompasses the property to be inspected.

(d) The issuing judge shall issue the warrant when such judge is satisfied that the following conditions are met:

(1) The one seeking the warrant must establish under oath or affirmation that the property to be inspected is to be inspected as a part of a legally authorized program of inspection which includes that property or that there is probable cause for believing that there is a condition, object, activity, or circumstance which legally justifies such an inspection of that property; and

(2) The issuing judge determines that the issuance of the warrant is authorized by this Code section.

(e) The inspection warrant shall be validly issued only if it meets the following requirements:

(1) The warrant is attached to the affidavit required to be made in order to obtain the warrant;

(2) The warrant describes, either directly or by reference to the affidavit, the property upon which the inspection is to occur and is sufficiently accurate that the executor of the warrant and the owner or possessor of the property can reasonably determine from it the property of which the warrant authorizes an inspection;

(3) The warrant indicates the conditions, objects, activities, or circumstances which the inspection is intended to check or reveal; and

(4) The warrant refers, in general terms, to the statutory or regulatory provisions sought to be enforced.

(f) No facts discovered or evidence obtained in an inspection conducted under authority of an inspection warrant issued pursuant to this chapter shall be competent as evidence in any criminal proceeding against any party.

20-1A-16.

It shall be the duty of all other state departments, agencies, officers, and employees to assure the most effective coordination and use of state resources, personnel, and facilities for the benefit of children and youths and to assist the department in effectuating the purposes of this chapter by making available to the department upon request of the board or commissioner and to the extent permissible by law the services, resources, personnel, and facilities of their respective departments and agencies.

20-1A-17.

The commissioner and the State School Superintendent, with the concurrence of the board for the department and the State Board of Education, are authorized to transfer programs relating to early childhood education from the Department of Education to the department, as long as such programs are not expressly assigned to the Department of Education by statute.

ARTICLE 2

20-1A-30.

As used in this article, the term:

(1) 'Center' means a day-care center, group day-care home, family day-care home, or child care learning center which is required to be licensed or registered under Article 1 of this chapter.

(2) 'Conviction' means a finding or verdict of guilty or a plea of guilty regardless of whether an appeal of the conviction has been sought.

(3) 'Crime' means any felony; a violation of Code Section 16-5-23, relating to simple battery, when the victim is a minor; a violation of Code Section 16-12-1, relating to contributing to the delinquency of a minor; a violation of Chapter 6 of Title 16, relating to sexual offenses; a violation of Code Section 16-4-1, relating to criminal attempt when the crime attempted is any of the crimes specified by this paragraph; or any other offenses committed in another jurisdiction which, if committed in this state, would be one of the enumerated crimes listed in this paragraph.

(4) 'Criminal record' means:

(A) Conviction of a crime;

(B) Arrest, charge, and sentencing for a crime where:

(i) A plea of nolo contendere was entered to the charge;

(ii) First offender treatment without adjudication of guilt pursuant to the charge was granted; provided, however, that this division shall not apply to a violation of Chapter 13 of Title 16, relating to controlled substances, or any other offense committed in another jurisdiction which, if it were committed in this state, would be a violation of Chapter 13 of Title 16 if such violation or offense constituted only simple possession; or

(iii) Adjudication or sentence was otherwise withheld or not entered on the charge; provided, however, that this division shall not apply to a violation of Chapter 13 of Title 16, relating to controlled substances, or any other offense committed in another jurisdiction which, if it were committed in this state, would be a violation of Chapter 13 of Title 16 if such violation or offense constituted only simple possession; or

(C) Arrest and being charged for a crime if the charge is pending, unless the time for prosecuting such crime has expired pursuant to Chapter 3 of Title 17.

(5) 'Director' means the chief administrative or executive officer of a facility.

(6) 'Emergency temporary employee' means an employee other than a director whose duties involve personal contact between that person and any child being cared for at the

facility and who is hired on an expedited basis to avoid noncompliance with staffing standards for centers required by law, rule, or regulation.

(7) 'Employee' means any person, other than a director, employed by a center to perform at any of the center´s facilities any duties which involve personal contact between that person and any child being cared for at the facility and also includes any adult person who resides at the facility or who, with or without compensation, performs duties for the center which involve personal contact between that person and any child being cared for by the center.

(8) 'Employment history' means a record of where a person has worked for the past ten years.

(9) 'Facility' means a center´s real property at which children are received for care.

(10) 'Fingerprint records check determination' means a satisfactory or unsatisfactory determination by the department based upon a records check comparison of GCIC information with fingerprints and other information in a records check application.

(11) 'GCIC' means the Georgia Crime Information Center established under Article 2 of Chapter 3 of Title 35.

(12) 'GCIC information' means criminal history record information as defined in Code Section 35-3-30.

(13) 'License' means the document issued by the department to authorize the center to which it is issued to operate a facility.

(14) 'National fingerprint records check determination' means a satisfactory or unsatisfactory determination by the department in accordance with applicable law based upon a report from the Federal Bureau of Investigation after a search of bureau records and fingerprints.

(15) 'Preliminary records check application' means an application for a preliminary records check determination on forms provided by the department.

(16) 'Preliminary records check determination' means a satisfactory or unsatisfactory determination by the department based only upon a comparison of GCIC information with other than fingerprint information regarding the person upon whom the records check is being performed.

(17) 'Records check application' means two sets of classifiable fingerprints, a records search fee to be established by the board by rule and regulation, payable in such form as the department may direct to cover the cost of a fingerprint records check under this article, and an affidavit by the applicant disclosing the nature and date of any arrest, charge, or conviction of the applicant for the violation of any law, except for motor vehicle parking violations, whether or not the violation occurred in this state, and such additional information as the department may require.

(18) 'Satisfactory determination' means a written determination that a person for whom a records check was performed was found to have no criminal record.

(19) 'State fingerprint records check determination' means a satisfactory or unsatisfactory determination by the department in accordance with applicable law based upon a records check comparison of GCIC information with fingerprints and other information in a records check application.

(20) 'Unsatisfactory determination' means a written determination that a person for whom a records check was performed has a criminal record.

20-1A-31.

(a) Each center shall be required to obtain a separate license for each facility and shall have a separate director for each facility.

(b) An applicant for a new license shall apply for a separate license for each new facility in this state owned or operated by that applicant and shall have a separate director for each such facility.

20-1A-32.

Accompanying any application for a new license for a facility, the applicant shall furnish to the department a records check application for the director and a satisfactory preliminary records check for each employee of such facility. In lieu of such records check applications, the applicant may submit evidence, satisfactory to the department, that within the immediately preceding 12 months the director received satisfactory state and national fingerprint records check determinations and each employee received a satisfactory preliminary records check determination, or that any employee other than the director whose preliminary records check revealed a criminal record of any kind has either subsequently received satisfactory state and national fingerprint records check determinations or has had the unsatisfactory determination reversed in accordance with Code Section 20-1A-43. The department may either perform preliminary records checks under agreement with GCIC or contract with GCIC and appropriate law enforcement agencies which have access to GCIC information to have those agencies perform for the department a preliminary records check for each preliminary records check application submitted thereto by the department. Either the department or the appropriate law enforcement agencies may charge reasonable fees for performing preliminary records checks.

20-1A-33.

After being furnished the required records check application under Code Section 20-1A-32 the department shall notify in writing the license applicant as to each person for whom an application was received regarding whether the department´s determination as to that person´s state fingerprint records check was satisfactory or unsatisfactory. If the preliminary records check determination was satisfactory as to each employee of an applicant´s facility and the state fingerprint records check was satisfactory as to the director, that applicant may be issued a license for that facility if the applicant otherwise qualifies for a license under Article 1 of this chapter. If the state or national fingerprint records check determination was unsatisfactory as to the director of an applicant´s facility, the applicant shall designate another director for that facility after receiving notification of the determination and proceed under Code Section 20-1A-32 and this Code section to obtain state and national fingerprint records checks for that newly designated director. If the preliminary records check for any employee other than the director revealed a criminal record of any kind, such employee shall not be allowed to work in the center until he or she either has obtained satisfactory state and national fingerprint records check determinations or has had the unsatisfactory determination reversed in accordance with Code Section 20-1A-43. If the determination was unsatisfactory as to any employee of an applicant´s facility, the applicant shall, after receiving notification of that determination, take such steps as are necessary so that such person is no longer an employee. Any employee other than the director who receives a satisfactory preliminary records check shall not be required to obtain a fingerprint records check unless such an employee has been designated as a director or as permitted by the provisions of subsection (c) of Code Section 20-1A-39.

20-1A-34.

The department shall transmit to GCIC both sets of fingerprints and the records search fee from each fingerprint records check application. Upon receipt thereof, GCIC shall promptly transmit one set of fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall retain the other set and promptly conduct a search of its records and records to which it has access. Within ten days after receiving fingerprints acceptable to GCIC, the application, and fee, GCIC shall notify the department in writing of any derogatory finding, including but not limited to any criminal record, of the state fingerprint records check or if there is no such finding. After a search of Federal Bureau of Investigation records and fingerprints and upon receipt of the bureau´s report, the department shall make a national fingerprint records determination.

20-1A-35.

After receiving a Federal Bureau of Investigation report regarding a national fingerprint records check under Code Section 20-1A-34, the department shall make a determination based thereon and notify in writing the license applicant as to whether that records check was satisfactory or unsatisfactory. If the national fingerprint records check determination was unsatisfactory as to the director of an applicant´s facility, after receiving notification of that determination, that applicant shall designate another director for such facility for which director the applicant has not received or made an unsatisfactory preliminary or fingerprint records check determination and proceed under the requirements of Code Sections 20-1A-32 through 20-1A-34 and this Code section to obtain state and national fingerprint records check determinations for the newly designated director. The director may begin working upon the receipt of a satisfactory state fingerprint records check determination pending the receipt of the national fingerprint records check determination from the department. The department may revoke the license of that facility if the facility fails to comply with the requirements of this Code section and Code Section 20-1A-33 to receive satisfactory state and national fingerprint determinations on the director or to comply with Code Section 20-1A-33 regarding employees other than the director.

20-1A-36.

No facility operated as an early care and education program or similar facility or any operator of such a facility shall employ any person who has been convicted of or who has entered a plea of guilty or nolo contendere to any offense specified in Code Section 16-12-1.1 or allow any such person to reside at or be domiciled at such facility in violation of Code Section 16-12-1.1. The department shall either deny the issuance of or revoke the license, commission, or registration of any such facility violating the provisions of this Code section. The powers and duties set forth in this Code section are cumulative and not intended to limit the powers and duties set forth throughout this article.

20-1A-37.

(a) Notwithstanding any other provision of this article, an individual who resides in a family day-care home, as defined by Code Section 20-1A-2, shall not be required to provide fingerprints for routine fingerprints records checks if the operator of the family day-care home provides the department with an affidavit stating that such individual is not present in the home at the same time as the children who are received for pay for supervision and care. However, all persons residing in a family day-care home are required to obtain satisfactory preliminary records checks and submit them to the department.

(b) As an alternative to the requirements set out in this article pertaining to obtaining preliminary criminal records check determinations through the department for employees of centers and adults residing in a family day-care home, but not including directors of centers, centers may obtain GCIC information through local law enforcement agencies. The center shall be responsible for reviewing the GCIC information obtained for the potential employee or adult residing in the family day-care home and making a written determination that the individual does not have a criminal record as defined in this article. This written determination, together with all supporting documentation received from any law enforcement agency, must be maintained in the center´s file and available for inspection by the department. This satisfactory determination must be made before the employee begins any duties for the center. However, where there is an urgent need for an emergency temporary employee to work at a center´s facility in order to avoid immediate noncompliance with staffing requirements, such center may utilize the applicant as an emergency temporary employee after applying for the preliminary records check through the local law enforcement agency and completing the affidavit. In such emergency situations, the director of the center must complete an affidavit, with all supporting documentation attached thereto, stating that the GCIC information has been requested through an identified local law enforcement agency and that the results were not immediately available to the center prior to assigning the employee to work with children at the center´s facility in order to avoid immediate noncompliance with staffing ratios. The affidavit with supporting documentation must be maintained in the center´s file on the individual and available to the department for inspection. The director shall review the GCIC information upon receipt, but in no case shall an emergency temporary employee be permitted to continue working for more than three days without having a satisfactory determination made by the director and entered into the center´s file on the employee with all supporting documentation. The department shall promulgate rules and regulations limiting the extent to which centers are authorized to use emergency temporary employees in accordance with this subsection. Employees, emergency temporary employees, and other adults required to have records checks who are utilized by centers are subject to all other requirements set forth in this article. Where the department has reason to question the validity of the GCIC information or the satisfactory determination made by the center, the department may require the employee, emergency temporary employee, or other adult to submit a preliminary criminal records check application through the department together with appropriate fees.

20-1A-38.

(a) If the director of a facility which has been issued a license ceases to be the director of that facility, the licensee shall thereupon designate a new director. After such change, the licensee of that facility shall notify the department of such change and of any additional information the department may require regarding the newly designated director of that facility. Such information shall include but not be limited to any information the licensee may have regarding preliminary or any fingerprint records check determinations regarding that director. After receiving a change of director notification, the department shall make a written determination from the information furnished with such notification and the department´s own records as to whether satisfactory or unsatisfactory preliminary or state and national fingerprint records check determinations have ever been made for the newly designated director. If the department determines that such director within 12 months prior thereto has had satisfactory state and national fingerprint records check determinations, such determinations shall be deemed to be satisfactory state and national fingerprint records check determinations as to that director. The license of that facility shall not be adversely affected by that change in director, and the licensee shall be so notified.

(b) If the department determines under subsection (a) of this Code section that there has ever been an unsatisfactory preliminary or state or national fingerprint records check determination of the newly designated director which has not been legally reversed, the center and that director shall be so notified. The license for that director´s facility shall be indefinitely suspended or revoked unless the center designates another director for whom it has not received or made an unsatisfactory preliminary or state or national fingerprint records check determination and proceeds pursuant to the provisions of this Code section relating to a change of director.

(c) If the department determines under subsection (a) of this Code section that there have been no state and national fingerprint records check determinations regarding the newly designated director within the immediately preceding 12 months, the department shall so notify the center. The center shall furnish to the department the fingerprint records check application of the newly designated director after the date the notification is sent by the department or the license of that facility shall be indefinitely suspended or revoked. If that fingerprint records check application is so received, unless the department has within the immediately preceding 12 months made a satisfactory state fingerprint records check determination regarding the newly designated director, the department shall perform a state fingerprint records check determination of the newly designated director, and the applicant and that director shall be so notified. If that determination is unsatisfactory, the provisions of subsection (b) of this Code section regarding procedures after notification shall apply. If that determination is satisfactory, the department shall perform a national fingerprint

records check determination for that director as provided in Code Sections 20-1A-34 and 20-1A-35. The director may begin working upon the receipt of a satisfactory state fingerprint records check determination pending the receipt of the national fingerprint records check determination from the department. If that determination is satisfactory, the center and director for whom the determination was made shall be so notified after the department makes its determination, and the license for the facility at which that person is the newly designated director shall not be adversely affected by that change of director. If that determination is unsatisfactory, the provisions of subsection (b) of this Code section shall apply.

20-1A-39.

(a) Before a person may become an employee other than a director of any center after that center has received a license, that center shall require that person to obtain a satisfactory preliminary records check. The center shall maintain documentation in the employee´s personnel file, which is available to the department upon request, which reflects that a satisfactory preliminary criminal records check was received before the employee began working with children. If the preliminary records check for any potential employee other than the director reveals a criminal record of any kind, such potential employee shall not be allowed to begin working until either such potential employee has obtained satisfactory state and national fingerprint records check determinations or has had the unsatisfactory preliminary or fingerprint records check determination reversed in accordance with Code Section 20-1A-43. If either the preliminary or state or national fingerprint records determination is unsatisfactory, the center shall, after receiving notification of the determination, take such steps as are necessary so that such person is no longer an employee. Any potential employee other than the director who receives a satisfactory preliminary records check determination shall not be required to obtain a fingerprint records check determination except as permitted in accordance with subsection (c) of this Code section.

(b) A license is subject to suspension or revocation and the department may refuse to issue a license if a director or employee does not undergo the records and fingerprint checks applicable to that director or employee and receive satisfactory determinations.

(c) After the issuance of a license, the department may require a fingerprint records check on any director or employee to confirm identification for records search purposes, when the department has reason to believe the employee has a criminal record that renders the employee ineligible to have contact with children in the center, or during the course of a child abuse investigation involving the director or employee.

(d) No center may hire any person as an employee unless there is on file in the center an employment history and a satisfactory preliminary records check or, if the preliminary records check determination revealed a criminal record of any kind as to such person, either satisfactory state and satisfactory national records check determinations for that person or proof that an unsatisfactory determination has been reversed in accordance with Code Section 20-1A-43.

(e) A director of a facility having an employee whom that director knows or should reasonably know to have a criminal record that renders the employee ineligible to have contact with children in the center shall be guilty of a misdemeanor.

20-1A-40.

(a) GCIC and law enforcement agencies which have access to GCIC information shall cooperate with the department in performing preliminary and fingerprint records checks required under this article and shall provide such information so required for such records checks notwithstanding any other law to the contrary and may charge reasonable fees therefor.

(b) Any person who knowingly and under false pretenses requests, obtains, or attempts to obtain GCIC information otherwise authorized to be obtained pursuant to this article, or who knowingly communicates or attempts to communicate such information obtained pursuant to this article to any person or entity except in accordance with this article, or who knowingly uses or attempts to use such information obtained pursuant to this article for any purpose other than as authorized by this article shall be fined not more than $5,000.00, imprisoned for not more than two years, or both.

20-1A-41.

(a) Neither GCIC, the department, any law enforcement agency, nor the employees of any such entities shall be responsible for the accuracy of information nor have any liability for defamation, invasion of privacy, negligence, or any other claim in connection with any dissemination of information or determination based thereon pursuant to this article.

(b) A center, its director, and its employees shall have no liability for defamation, invasion of privacy, or any other claim based upon good faith action thereby pursuant to the requirements of this article.

20-1A-42.

The requirements of this article are supplemental to any requirements for a license imposed by Article 1 of this chapter.

20-1A-43.

A determination by the department regarding preliminary or fingerprint records checks under this article, or any action by the department revoking, suspending, or refusing to grant or renew a license based upon such determination, shall constitute a contested case for purposes of Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' except that any hearing required to be held pursuant thereto may be held reasonably expeditiously after such determination or action by the department. It is expressly provided that upon motion from any party, the hearing officer may, in his or her discretion, consider matters in mitigation of any conviction, provided that the hearing officer examines the circumstances of the case and makes an independent finding that no physical harm was done to a victim and also examines the character and employment history since the conviction and determines that there is no propensity for cruel behavior or behavior involving moral turpitude on the part of the person making a motion for an exception to sanctions normally imposed. If the hearing officer deems a hearing to be appropriate, he or she will also notify at least 30 days prior to such hearing the office of the prosecuting attorney who initiated the prosecution of the case in question in order to allow the prosecutor to object to a possible determination that the conviction would not be a bar for the grant or continuation of a license or employment as contemplated within this chapter. If objections are made, the hearing officer will take such objections into consideration in considering the case.

20-1A-44.

The board is authorized to provide by regulation for the administration of this article."

SECTION 2.

Chapter 5 of Title 49 of the Official Code of Georgia Annotated, relating to programs and protection for children, is amended by:

(1) Redesignating Code Section 49-5-240, relating to definitions relative to the Georgia Child Care Council, as Code Section 20-1A-60;

(2) Redesignating Code Section 49-5-241, relating to the creation and membership of the council, as Code Section 20-1A-61;

(3) Redesignating Code Section 49-5-242, relating to the officers, meetings, quorum, and expenses of the council, as Code Section 20-1A-62;

(4) Redesignating Code Section 49-5-243, relating to the director of the council, as Code Section 20-1A-63; and

(5) Redesignating Code Section 49-5-244, relating to the duties of the council, as Code Section 20-1A-64.

SECTION 3.

Code Sections 20-1A-60 through 20-1A-64 of the Official Code of Georgia Annotated, inclusive, are designated as Article 3 of Chapter 1A of Title 20 of the Official Code of Georgia Annotated and are amended to read as follows:

"ARTICLE 3

~~49-5-240~~ 20-1A-60.

As used in this article, the term:

(1) 'Council' means the Georgia Child Care Council created pursuant to Code Section ~~49-5-241~~ 20-1A-61.

(2) 'Department' means the Department of Early Care and Learning.

~~(2)~~(3) 'Federal act' means the Child Care and Development Block Grant Act of 1990, pursuant to amendments to Chapter 8 of subtitle A of Title IV of the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35).

(4) 'Lead agency' means the Department of Human Resources or any state agency designated by the Governor pursuant to the federal act and applicable regulations.

~~49-5-241~~ 20-1A-61.

(a) There is created the Georgia Child Care Council which shall consist of ~~19~~ 20 members. ~~Thirteen~~ Fourteen of those members shall be voting members appointed by the Governor and confirmed by the Senate, and two shall be voting members appointed as provided in paragraph ~~(10)~~ (11) of this subsection. The ~~15~~ 16 voting members shall be appointed as follows:

(1) Two members shall be representatives of local or state chambers of commerce;

(2) One member shall be a representative of the licensed or commissioned for profit child care businesses in the state;

(3) One member shall be a representative of the licensed or commissioned not for profit child care businesses in the state;

(4) One member shall be a representative from a public Pre-K provider;

(5) Four members shall be consumers of child care services or persons whose children are regularly placed in child care but who have no other business connection with any child care facility or business and at least one of them shall represent the interests of children with special needs and one shall represent the interests of school age children;

~~(5)~~(6) One member shall represent registered family day-care homes~~, as defined in Code Section 49-5-3~~;

~~(6)~~(7) One member shall represent licensed or commissioned church or synagogue day-care centers;

~~(7)~~(8) One member shall be an expert or have special academic or research responsibilities in early childhood development;

~~(8)~~(9) One member shall represent a child care resource and referral agency;

~~(9)~~(10) One member shall represent a Head Start organization; and

~~(10)~~(11) Two members shall represent the general public and shall be appointed by the President of the Senate and the Speaker of the House of Representatives.

At the expiration of the original three-year terms of office of members of the council, successors to such members shall be appointed as follows: ~~six~~ seven of the members appointed by the Governor shall serve for initial terms of one year and seven of such Governor appointed members shall serve for initial terms of three years; thereafter all members appointed by the Governor shall serve for terms of three years. Successors to those members appointed by the Speaker of the House of Representatives and the President of the Senate shall each serve for terms of three years. The remaining four nonvoting members shall be the State School Superintendent, the Commissioner of Labor, the commissioner of human resources, and the commissioner of industry, trade, and tourism, or the designee of the State School Superintendent, the Commissioner of Labor, the commissioner of human resources, and the commissioner of industry, trade, and tourism, all of whom shall be ex officio members.

(b) The ex officio members of the council shall serve while holding their state offices. ~~The original appointive members shall serve for a term which expires June 30, 1994, and their successors shall be appointed as provided in subsection (a) of this Code section.~~

(c) Vacancies in the office of any appointive member of the council shall be filled for the remainder of the unexpired term by appointment by the Governor in the same manner as the appointment to the position on the council which becomes vacant, and the appointment shall be submitted to the Senate for confirmation at the next regular session of the General Assembly.

(d) The Governor may remove any appointive member of the council for failure to attend meetings, neglect of duty, or incompetence.

(e) Any appointive member of the council who, during such person´s term of office, ceases to meet the qualifications for the original appointment or does not attend three or more successive meetings of the council shall forfeit such person´s membership on the council.

(f) Each member of the council shall take an oath of office before the Governor that he or she will faithfully perform the duties of office.

~~49-5-242~~ 20-1A-62.

(a) The Governor shall annually appoint a ~~chairman~~ chairperson and vice ~~chairman~~ chairperson of the council to serve for one-year terms.

(b) The council shall hold regular meetings at least once every calendar quarter and may not hold more than six regular or special meetings during any calendar year. A special meeting may be called by the ~~chairman~~ chairperson, the commissioner, or a majority of the members of the council. The council shall meet at such times and at such designated places in the state as it may determine. In addition to the notice of meetings required under Chapter 14 of Title 50, the council shall also provide written notice to the commissioner no later than 24 hours prior to the meeting.

(c) Nine members of the council shall constitute a quorum.

(d) The appointive members of the council shall receive the same allowances authorized for legislative members of interim legislative committees for each day of actual attendance at official meetings of the council. Ex officio members of the council shall receive no additional compensation for their services on the council but shall be reimbursed for expenses incurred by them in their performance of their duties as members of the council in the same manner as state employees are reimbursed for expenses.

~~49-5-243~~ 20-1A-63.

~~There shall be a director of the council who shall be both appointed and removed by the council subject to approval by the Governor. Subject to the general policy established by the council, the director shall supervise, direct, account for, organize, plan, administer, and execute the functions of the council. The council shall be attached to the Department of Human Resources for administrative purposes only, as provided in Code Section 50-4-3. Costs incurred by the council shall be funded by moneys available under the federal act.~~

The council shall advise and make recommendations to the board and commissioner on the following:

(1) Policy matters relating to early care and education programs;

(2) Planning and coordination of child care programs at the state and local levels;

(3) Measures to improve the quality, availability, and affordability of child care in this state;

(4) Issues relating to the annual Georgia report on child care; and

(5) General policy matters relating to functions performed or services provided by the department.

~~49-5-244~~ 20-1A-64.

(a) The ~~council shall recommend measures to improve the quality, availability, and affordability of child care in this state. In addition, the council~~ lead agency shall:

(1) Provide to the department, under contract, an amount not less than the minimum percentage of the grant to the State of Georgia under the federal act, which must be expended for activities that are designed to provide comprehensive consumer education to parents and the public, activities that increase parental choice, and activities designed to improve the quality, availability, and affordability of child care. In addition to this minimum percentage, the lead agency shall also provide the amount of any additional funds, which exist on October 1, 2004, or which may exist in the future, which are required to be spent on activities relating to improving the quality of child care, including care for school-aged children;

~~(1)~~(2) In conjunction with the department, provide ~~Provide~~ a mechanism for the planning and coordination of child care programs at the state and local levels;

(3) Recommend to the department measures to improve the quality, availability, and affordability of child care in this state;

~~(2)~~(4) In conjunction with the department, inventory ~~Inventory~~ and monitor the disbursement and make recommendations as to the coordination of the disbursement of all state and federal funding streams that impact the supply, quality, and affordability of child care;

~~(3)~~(5) In conjunction with the department, develop ~~Develop~~ an annual Georgia child care plan which includes all identified revenue sources and, at a minimum, the requirements indicated in the federal act;

~~(4)~~(6) Hold one or more public hearings, with state-wide publication of the notice of such hearings 30 days before the date of each hearing, to provide the public with an opportunity to comment on the provision of child care services under the annual Georgia child care plan, as required by the federal act; ~~Develop an annual Georgia report on child care, reporting child care statistics, an evaluation of the state planning process, and~~

(7) Develop reports that meet, at a minimum, ~~meeting~~ the reporting requirements of the federal act;

~~(5) Hold at least one annual public hearing on child care needs;~~

~~(6) Serve as the state clearing-house for information on child care resources and statistics;~~

~~(7) Provide child care information to corporations and business seeking to locate in Georgia;~~

~~(8) Promote public-private sector collaboration for child care;~~

~~(9)~~(8) In conjunction with the department, recommend ~~Recommend~~ to the Governor and to the General Assembly policies, legislation, and funding that will promote the work of the ~~council~~ lead agency and department and the realization of the Georgia child care plan to promote quality, affordable, and accessible child care for Georgia´s children; and

~~(10)~~(9) Develop a plan for application and distribution, including any necessary requests for proposals, in accordance with the Georgia child care plan, for federal block grant funds available to Georgia under the federal act~~;~~.

~~(11) Promote consumer education to parents to help them select child care including the expansion of child care resource and referral agencies; and~~

~~(12) Monitor, review, and recommend improvements to child care licensing requirements.~~

(b) The department shall, in accordance with the policies, rules, and regulations promulgated by the board:

(1) In conjunction with the lead agency, provide a mechanism for the planning and coordination of child care programs at the state and local levels;

(2) Plan and implement activities that are designed to provide comprehensive consumer education to parents and the public, activities that increase parental choice, activities designed to improve the quality, availability, and affordability of child care, and other activities which meet the requirements of the federal act;

(3) Recommend to the lead agency measures to improve the quality, availability, and affordability of child care in this state;

(4) In conjunction with the lead agency, inventory and monitor the disbursement and make recommendations as to the coordination of the disbursement of all state and federal funding streams that impact the supply, quality, and affordability of child care funds expended by the department;

(5) Develop an annual Georgia report on child care, reporting child care statistics, and, in conjunction with the lead agency, an evaluation of the state planning process related to quality initiatives;

(6) Serve as the state clearing-house for information on child care resources and statistics by working with the child care resource and referral agencies;

(7) Provide child care information to corporations and businesses seeking to locate in Georgia;

(8) Promote public-private sector collaboration for child care;

(9) Recommend to the Governor and to the General Assembly policies, legislation, and funding that will promote the work of the department and the realization of the Georgia child care plan and to promote quality, affordable, and accessible child care for Georgia´s children;

(10) Promote consumer education to parents to help in the selection of child care, including the expansion of the child care resource and referral agencies; and

(11) Develop a plan for application and distribution, including any necessary requests for proposals, in accordance with the Georgia child care plan, for federal block grant funds available to Georgia under the federal act.″

SECTION 4.

Code Section 25-2-13 of the Official Code of Georgia Annotated, relating to buildings presenting special hazards to persons or property, is amended by striking subparagraph (b)(1)(I) in its entirety and inserting in lieu thereof the following:

″(I) Group day-care homes and day-care centers required to be licensed or commissioned as such by the Department of ~~Human Resources~~ Early Care and Learning and in which at least seven children receive care. As used in this subparagraph, the term 'group day-care home' means a day-care facility subject to licensure by the Department of ~~Human Resources~~ Early Care and Learning where at least seven but not more than 12 children receive care; and the term 'day-care center' means a day-care facility subject to licensure or issuance of a commission by the Department of ~~Human Resources~~ Early Care and Learning where more than 12 children receive care. Fire safety standards adopted by rules of the Commissioner pursuant to Code Section 25-2-4 which are applicable to group day-care homes and day-care centers shall not require staff-to-child ratios; and″.

SECTION 5.

Code Section 42-1-12 of the Official Code of Georgia Annotated, relating to registration of sexually violent predators, is amended by striking paragraph (3) of subsection (c.1) in its entirety and inserting in lieu thereof the following:

″(3) The Department of Human Resources shall provide, on a one-time basis, information to all ~~day care and group day care~~ day-care, group day-care, and family day-care programs regulated ~~pursuant to Code Section 49-5-12~~ on how to access and retrieve from the Georgia Bureau of Investigation´s Internet website a list of the names and addresses of all registered sexual offenders. On and after October 1, 2004, the Department of Early Care and Learning ~~and~~ shall include, on a continuing basis, such information with each application for licensure, commissioning, or registration for early care and education programs.″

SECTION 6.

Code Section 48-7-40.6 of the Official Code of Georgia Annotated, relating to tax credits for employers providing child care, is amended by striking subparagraph (a)(6)(A) in its entirety and inserting in lieu thereof the following:

"(A) The facility is licensed or commissioned by the Department of ~~Human Resources~~ Early Care and Learning pursuant to ~~Code Section 49-5-12~~ Chapter 1A of Title 20;".

SECTION 7.

Chapter 5 of Title 49 of the Official Code of Georgia Annotated, relating to programs and protection for children, is amended in Code Section 49-5-3, relating to definitions, by striking paragraphs (1), (4), (8), and (9.1) and inserting in lieu thereof the following:

"(1) 'Child-caring institution' means any institution, society, agency, or facility, whether incorporated or not, which either primarily or incidentally provides full-time care for children ~~under 17~~ through 18 years of age outside of their own homes, subject to such exceptions as may be provided in rules and regulations of the board."

"(4) ~~'Day-care center' means any place operated by a person, society, agency, corporation, institution, or group wherein are received for pay for group care for fewer than 24 hours per day without transfer of legal custody 19 or more children under 18 years of age.~~ Reserved."

"(8) ~~'Family day-care home' means a private residence operated by any person who receives therein for pay for supervision and care fewer than 24 hours per day, without transfer of legal custody, three but not more than six children under 18 years of age who are not related to such person and whose parents or guardians are not residents in the same private residence.~~ Reserved."

"(9.1) ~~'Group day-care home' means any place operated by any person or group wherein are received for pay not less than seven nor more than 18 children under 18 years of age for care and supervision for less than 24 hours per day.~~ Reserved."

SECTION 8.

Said chapter is further amended in Code Section 49-5-8, relating to powers and duties of the Department of Human Resources, by striking paragraphs (6) and (7) of subsection (a) and inserting in lieu thereof the following:

"(6) Regulation of child-placing ~~and child-caring~~ agencies, child-caring institutions, and maternity homes by:

(A) ~~Setting standards~~ Establishing rules and regulations for and providing consultation ~~and making recommendations concerning establishment and incorporation of all such~~

~~agencies~~ on such rules and regulations for all such agencies, institutions, and homes; and

(B) Licensing and inspecting ~~regularly~~ periodically all such agencies, institutions, and homes to ensure their adherence to established standards as prescribed by the department;

(7) Adoption services, as follows:

(A) Supervising the work of all child-placing agencies when funds are made available;

(B) Providing services to parents desiring to surrender children for adoption as provided for in adoption statutes;

(C) Providing care or payment of maintenance costs for mothers bearing children out of wedlock and children being considered for adoption;

(D) Inquiring into the character and reputation of persons making application for the adoption of children;

(E) Placing children for adoption;

(F) Providing financial assistance after the consummation of a legal adoption to families adopting children who would otherwise remain in foster care at state expense. Financial assistance may only be granted for hard-to-place children with physical, mental, or emotional disabilities or with other problems for whom it is difficult to find a permanent home. Financial assistance may not exceed 100 percent of the amount paid for boarding such child and for special services such as medical care not available through insurance or public facilities. Such supplements shall only be available to families who could not provide for the child adequately without continued financial assistance. The department may review the supplements paid at any time but shall review them at least annually to determine the need for continued assistance;

(G) Providing payment to a licensed child-placing agency which places a child with special needs who is under the jurisdiction of the department for adoption. Payment may not exceed $5,000.00 for each such adoption arranged by an agency. The board shall define the special needs child. One-half of such payment shall be made at the time of placement and the remaining amount shall be paid when the adoption is finalized. If the adoption disrupts prior to finalization, the state shall be reimbursed by the child-placing agency in an amount calculated on a prorated basis based on length of time the child was in the home and the services provided; and

(H) Providing payment to an agency which recruits, educates, or trains potential adoptive or foster parents for preparation in anticipation of adopting or fostering a special needs child. The board shall define the special needs child and set the payment amount by rule and regulation. Upon appropriate documentation of these preplacement

services in a timely manner, payments as set by the board shall be made upon enrollment of each potential adoptive or foster parent for such services;″.

SECTION 9.

Said chapter is further amended in Code Section 49-5-12, relating to licensing of child welfare agencies, by striking subsections (a), (b), (c), (d), (e), (f), (k), and (s) and inserting in lieu thereof the following:

″(a) As used in this Code section, the term 'child ~~'Child~~ welfare agency' means any child-caring institution, child-placing agency, or maternity home~~, family day-care home, group day-care home, or day-care center~~.

~~(b)(1) Day-care centers operated as part of a local church ministry or a religious nonprofit school or a nonprofit religious charitable organization shall notify the department annually and be commissioned in lieu of being licensed. Commissioned day-care centers shall operate in accordance with the same procedures, standards, rules, and regulations which are established by the board for the operation of licensed day-care centers. Any day-care center operated as part of a local church ministry or a religious nonprofit school or a nonprofit religious charitable organization may voluntarily elect to apply for a license as provided for in paragraph (2) of this subsection.~~

~~(2)~~(b) All child welfare agencies, as defined in subsection (a) of this Code section, shall be licensed or commissioned annually by the department in accordance with procedures, standards, rules, and regulations to be established by the board~~; provided, however, that the department may require persons who operate family day-care homes to register with the department~~. The board shall develop and publish ~~standards~~ rules and regulations for licensing or commissioning of child welfare agencies. Child welfare agencies electing to be commissioned rather than licensed shall operate in accordance with the same procedures, standards, rules, and regulations for licensing of child welfare agencies. A license issued to a child-placing agency shall be deemed approval of all foster family homes approved, supervised, and used by the licensed child-placing agency as a part of its work, subject to this article and rules and regulations of the board.

~~(3) The department shall have the responsibility to review existing day-care regulations to determine which regulations are necessary to safeguard and protect the well-being and general welfare of children and youth, which regulations could more appropriately be issued as guidelines for quality day care, and which regulations unnecessarily restrict the delivery of day-care services. A list of proposed rule changes shall be submitted to the Board of Human Resources no later than November 1, 1982. Copies of the proposed changes shall be submitted to the Lieutenant Governor, the Speaker of the House of~~

~~Representatives, and the chairmen of the Senate Youth, Aging, and Human Ecology Committee and the House Health and Ecology Committee.~~

~~(4) No later than December 31, 1982, the department shall publish and make available to day-care centers and interested persons a list of guidelines for quality child care.~~

~~(5) After a family day-care home, group day-care home, or day-care center has been licensed, commissioned, or registered by the department as provided in this article, the facility shall not be required to have a permit to operate a food service establishment as required in Code Section 26-2-371, provided that standards for food service have been incorporated in the regulations for licensing, commissioning, or registering such agencies.~~

~~(6) The department shall not be authorized to prescribe, question, or regulate the specific content of educational curriculum taught or specify what play and program materials a group day-care home or day-care center shall use.~~

~~(7) Persons who operate group day-care homes and day-care centers shall be required to post in a conspicuous place next to any telephone in a group day-care home or day-care center the telephone numbers of the nearest or applicable providers of emergency medical, police, and fire services.~~

~~(7.1) Persons who operate day-care centers, group day-care homes, or family day-care homes shall post signs prohibiting smoking to carry out the purposes of paragraph (4) of subsection (a) of Code Section 16-12-2.~~

~~(8) Group day-care homes and day-care centers shall provide a minimum of 35 square feet of usable space consisting of indoor play areas, rest areas, and dining facilities for each child present in the facility. Day-care centers will be allowed to designate in writing to the department two one-hour periods daily during which 25 square feet of usable space per child for children aged three years and older may be provided. Notwithstanding the limitation to 18 children prescribed by paragraph (9.1) of Code Section 49-5-3, group day-care homes will be allowed to designate in writing to the department two one-hour periods daily during which 25 square feet of usable space per child for children aged three years and older may be provided. Notwithstanding the limitation to six children prescribed by paragraph (8) of Code Section 49-5-3, a family day-care home operator may care for two additional children three years and older for two designated one-hour periods daily. Notwithstanding the provisions of this paragraph, all other applicable rules and regulations shall apply.~~

(c) The department shall assist applicants or licensees or persons holding commissions in meeting ~~standards~~ rules and regulations of the department for child welfare agencies and, if a licensee or person holding a commission is, for any reason, denied renewal of a license or commission or if a license or commission is revoked or if any applicant for a license or commission cannot meet department ~~standards~~ rules and regulations for child welfare

agencies, the department shall assist in planning the placement of children, if any, in the custody of such child welfare agency in some other licensed or commissioned child welfare agency or assist in returning them to their own homes or in making any other plans or provisions as may be necessary and advisable to meet the particular needs of the children involved.

(d) Application for a license or commission shall be made to the department upon forms furnished by the department. Upon receipt of an application for a license or commission and upon presentation by the applicant of evidence that the child welfare agency meets the ~~standards~~ rules and regulations prescribed by the department, the department shall issue such child welfare agency a license or commission for ~~a one-year period~~ no more than one year.

(e) If the department finds that any child welfare agency applicant does not meet ~~standards~~ rules and regulations prescribed by the department but is attempting to meet such ~~standards~~ rules and regulations, the department may, in its discretion, issue a temporary license or commission to such child welfare agency, but such temporary license or commission shall not be issued for more than a one-year period. Upon presentation of satisfactory evidence that such agency is making progress toward meeting prescribed ~~standards~~ rules and regulations of the department, the department may, in its discretion, reissue such temporary license or commission for one additional period not to exceed one year. As an alternative to a temporary license or commission, the department, in its discretion, may issue a restricted license or commission which states the restrictions on its face.

(f) The department shall refuse a license or commission upon a showing of:

(1) Noncompliance with the ~~Rules and Regulations for Day Care Centers, Family Day Care Homes, or Group Day Care Homes~~ rules and regulations for child welfare agencies as adopted by the Board of Human Resources which are designated in writing to the facilities as being related to children´s health and safety;

(2) Flagrant and continued operation of an unlicensed or uncommissioned facility in contravention of the law; or

(3) Prior license or commission denial or revocation within one year of application.″

″(k) It shall be the duty of the department to inspect at regular intervals all licensed or commissioned child welfare agencies within the state, including ~~all~~ foster family homes used by such child-placing agencies. The department shall have right of entrance, privilege of inspection, and right of access to all children under the care and control of the licensee or commissionee.″

″(s) The term 'licensed ~~day-care center~~ child welfare agency' shall include a commissioned ~~day-care center~~ child welfare agency and any references in this Code to a licensed ~~day-care center~~ child welfare agency, including criminal, administrative, and civil provisions

applicable to licensed ~~day-care centers~~ child welfare agencies, shall include and apply to commissioned ~~day-care centers~~ child welfare agencies unless otherwise provided in this ~~Code section~~ article."

SECTION 10.

Said chapter is further amended by striking paragraph (1) of Code Section 49-5-60, relating to definitions regarding employees´ records checks for day-care centers, in its entirety and inserting in lieu thereof the following:

"(1) 'Center' means a ~~day-care center, group day-care home, family day-care home, or~~ child-caring institution or child-placing agency which is required to be licensed or registered under Article 1 of this chapter."

SECTION 11.

Said chapter is further amended by striking Code Section 49-5-61, relating to the requirement of a separate license and separate director for each facility, in its entirety and inserting in lieu thereof the following:

"49-5-61.

~~On and after July 1, 1985, an~~ An applicant for a new license shall have a separate license for each new facility in this state owned or operated by that applicant and shall have a separate director for each such facility."

SECTION 12.

Said chapter is further amended by repealing in its entirety Code Section 49-5-65.1, relating to employment of persons who have entered pleas of guilty or nolo contendere to specified offenses, which reads as follows:

"49-5-65.1.

No facility operated as a day-care center, family day-care home, group-care facility, group day-care home, or similar facility or any operator of such a facility shall employ any person who has been convicted of or who has entered a plea of guilty or nolo contendere to any offense specified in Code Section 16-12-1.1 or allow any such person to reside at or be domiciled at such facility in violation of Code Section 16-12-1.1. The department shall either deny the issuance of or revoke the license, commission, or registration of any such facility violating the provisions of this Code section. The powers and duties set forth in this Code section are cumulative and not intended to limit the powers and duties set forth throughout this article."

SECTION 13.

Said chapter is further amended by striking Code Section 49-5-67, relating to fingerprint records check application for directors of existing facilities, in its entirety and inserting in lieu thereof the following:

″49-5-67.

~~(a) Notwithstanding any other provision of this article, an individual who resides in a family day-care home, as defined by Code Section 49-5-3, shall not be required to provide fingerprints for routine fingerprints records checks if the operator of the family day-care home provides the department with an affidavit stating that such individual is not present in the home at the same time as the children who are received for pay for supervision and care. However, all persons residing in a family day-care home are required to obtain satisfactory preliminary records checks and submit them to the department.~~

~~(b) As an exception to the requirements set out in this article for employees of centers, a center may hire emergency temporary employees in order to avoid noncompliance with staffing requirements for centers required by law, rule, or regulation. An emergency temporary employee may start working immediately after requesting a preliminary records check from a local law enforcement agency and may work up to five working days without the results of the preliminary records check if the director of the center maintains an affidavit with supporting documents in the employee´s personnel file stating that the emergency temporary employee applied for a preliminary records check with a local law enforcement agency before the employee began work and the date that the preliminary records check was received from the local law enforcement agency. The employee´s personnel file shall be available to the department for inspection. At the end of the five-day work period or upon receipt of the results of the preliminary records check, whichever occurs first, emergency temporary employees become subject to all other requirements of this article.~~ As an alternative to the requirements set out in this article pertaining to obtaining preliminary criminal records check determinations through the department for employees, foster parents, and adults residing in a foster care home, but not including directors of centers, centers may obtain GCIC information through local law enforcement agencies. The center shall be responsible for reviewing the GCIC information obtained for the potential employee, or foster parent or other adult residing in the foster care home, and making a written determination that the individual does not have a criminal record as defined in this article. This written determination, together with all supporting documentation received from any law enforcement agency, must be maintained in the center´s file and available for inspection by the department. This satisfactory determination must be made before the employee or foster parent begins any duties for the center. However, where there is an urgent need for an emergency temporary employee to work at

a center´s facility in order to avoid immediate noncompliance with staffing requirements, such center may utilize the applicant as an emergency temporary employee after applying for the preliminary records check through the local law enforcement agency and completing the affidavit. In such emergency situations, the director of the center must complete an affidavit, with all supporting documentation attached thereto, stating that the GCIC information has been requested through an identified local law enforcement agency and that the results were not immediately available to the center prior to assigning the employee to work with children at the center´s facility in order to avoid immediate noncompliance with staffing ratios. The affidavit with supporting documentation must be maintained in the center´s file on the individual and available to the department for inspection. The director shall review the GCIC information upon receipt, but in no case shall an emergency temporary employee be permitted to continue working for more than three days without having a satisfactory determination made by the director and entered into the center´s file on the employee with all supporting documentation. The department shall promulgate rules and regulations limiting the extent to which centers are authorized to use emergency temporary employees in accordance with this Code section. Foster parents and adults residing in a foster care home utilized by child-placing agencies shall never be utilized as emergency temporary employees of the child-placing agency. Employees, emergency temporary employees, foster parents, and other adults required to have records checks who are utilized by centers are subject to all other requirements set forth in this article. Where the department has reason to question the validity of the GCIC information or the satisfactory determination made by the center, the department may require the employee, emergency temporary employee, foster parent, or other adult to submit a preliminary criminal records check application through the department together with appropriate fees.″

SECTION 14.

Said chapter is further amended by striking subsection (d) of Code Section 49-5-69, relating to employment requirements and suspension or revocation of license or criminal penalty for violations, in its entirety and inserting in lieu thereof the following:

″(d) No center may hire any person as an employee ~~after July 1, 1999,~~ unless there is on file in the center an employment history and a satisfactory preliminary records check or, if the preliminary records check determination revealed a criminal record of any kind as to such person, either satisfactory state and satisfactory national records check determinations for that person or proof that an unsatisfactory determination has been reversed in accordance with Code Section 49-5-73.″

SECTION 15.

Said chapter is further amended by transferring to Chapter 1A of Title 20 of the Official Code of Georgia Annotated the provisions of Article 11 of said chapter, relating to the Georgia Child Care Council, renumbering such article and the Code sections therein, amending such article and Code sections as indicated in Section 3 of this Act, and reserving Article 11 of Chapter 5 of Title 49 of the Official Code of Georgia Annotated.

SECTION 16.

The Official Code of Georgia Annotated is amended by striking from the following Code sections the name "Office of School Readiness" wherever the same shall occur and inserting in lieu thereof the name "Department of Early Care and Learning":

(1) Code Section 20-2-320, relating to the Education Information Steering Committee and identification of data to implement the Quality Basic Education Program;

(2) Code Section 20-14-3, relating to membership, officers, and meetings of the Education Coordinating Council;

(3) Code Section 20-14-8, relating to general powers and duties of the Education Coordinating Council;

(4) Code Section 20-14-27, relating to required reports of the Office of Education Accountability;

(5) Code Section 20-14-60, relating to performance based accountability assessment program for pre-kindergarten; and

(6) Code Section 49-5-41, relating to persons and agencies permitted access to child abuse and deprivation records.

SECTION 17.

(a) Except as otherwise provided in subsection (b) of this section, this Act shall become effective October 1, 2004.

(b) Provisions of this Act relating to the appointment of members of the board and the commissioner of the Department of Early Care and Learning shall become effective July 1, 2004.

SECTION 18.

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