

Senate Bill 185

By: Senators Sims of the 12th, Hooks of the 14th, Seay of the 34th, Tate of the 38th, Davis of the 22nd and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 1A of Title 20 of the Official Code of Georgia Annotated, relating to early
2 care and learning, so as to provide for emergency closure of an early care and education
3 program upon the death of a minor or certain circumstances; to revise definitions; to provide
4 for certain procedures; to provide for hearings; to provide for contesting a closure; to provide
5 for related matters; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Chapter 1A of Title 20 of the Official Code of Georgia Annotated, relating to early care and
9 learning, is amended by revising Code Section 20-1A-13, relating to the emergency
10 placement of monitors in early care and education programs, as follows:

11 "20-1A-13.

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

13 (1) 'Emergency order' or 'order' means a written directive by the commissioner or the
14 commissioner's designee placing a monitor in an early care and education program or
15 closing an early care and education program in accordance with this Code section.

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

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

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

- 28 (1) The program is operating without a license, commission, or registration;
- 29 (2) The department has denied application for license, registration, or commission or has
30 initiated action to revoke the existing license, registration, or commission of the program;
31 or
- 32 (3) Children are suspected of being subjected to injury or life-threatening situations or
33 the health or safety of a child or children is in danger.
- 34 (c) A monitor may be placed in a program for no more than ten consecutive calendar days,
35 during which time the monitor shall observe conditions and regulatory compliance with
36 any recommended remedial action of the department. Upon expiration of the ten-day
37 period, should the conditions warrant, the initial ten-day period may be extended for an
38 additional ten-day period. The monitor shall report to the department. The monitor shall
39 not assume any administrative or child-caring responsibility within the program, nor shall
40 the monitor be liable for any actions of the program. The salary and related costs and travel
41 and subsistence allowance as defined by department policy of placing a monitor in a
42 program shall be reimbursed to the department by the program, unless the order placing the
43 monitor is determined to be invalid in a contested case or by final adjudication by a court
44 of competent jurisdiction, in which event the cost shall be paid by the department.
- 45 (d) An emergency order shall contain the following:
- 46 (1) The scope of the order;
- 47 (2) The reasons for the issuance of the order;
- 48 (3) The effective date of the order if other than the date the order is issued;
- 49 (4) The person to whom questions regarding the order are to be addressed; and
- 50 (5) Notice of the right to a preliminary hearing.
- 51 (e) Unless otherwise provided in the order, an emergency order shall become effective
52 upon its service. Service of an emergency order may be made upon the owner of the
53 facility, the director of the facility, or any other agent, employee, or person in charge of the
54 facility at the time of the service of the order.
- 55 (f) A request for a preliminary hearing shall be made in writing within five days from the
56 time of service, excepting weekends. The request ~~must~~ shall be made to the representative
57 of the department designated in the order. ~~Unless a request is made to appear in person, the
58 preliminary hearing shall consist of an administrative review of the record, written
59 evidence submitted by the early care and education program affected, and a preliminary
60 written argument in support of its contentions.~~
- 61 ~~(g) If a request is made to appear in person at the preliminary hearing, the program shall
62 provide the name and address of the person or persons, if any, who will be representing the
63 program in the preliminary hearing.~~

64 ~~(h)~~(g) Upon receipt of a request for a preliminary hearing, the department shall
65 immediately forward the request to the Office of State Administrative Hearings, which
66 shall set and give notice of the date, time, and location of the preliminary hearing. The
67 preliminary hearing shall be held as soon as possible after a request therefor but in no event
68 later than 72 hours after such request, provided that a program may request that such
69 hearing be held earlier and that in no event shall a hearing be held on a weekend or holiday.

70 ~~(i)~~(h) If a ~~personal appearance~~ hearing is requested, the preliminary hearing shall consist
71 of a review of ~~the~~ all oral and written evidence ~~in the record, any additional evidence~~
72 introduced at the hearing; and any arguments made. A recording shall be made of the
73 hearing.

74 ~~(j)~~(i) The ~~department~~ Office of State Administrative Hearings shall, where practicable,
75 issue an immediate oral order and shall, in all instances, issue a written order within four
76 business days after the close of the hearing.

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

80 (k)(1) Upon the death of a minor at any early care and education program licensed
81 pursuant to this chapter, the commissioner may issue an order immediately closing such
82 program for a period of not more than 30 days from the date of the order, unless such
83 death was medically anticipated or no serious rule violations by the program were
84 determined by the department. The commissioner may also issue an order immediately
85 closing an early care and education program in circumstances where a child's safety or
86 welfare is in imminent danger. Upon such closure, the commissioner or his or her
87 designee shall immediately conduct a review into the circumstances of the minor's death
88 or the circumstances where a child's safety or welfare is in imminent danger. If the
89 commissioner determines that the program where such minor's death occurred or where
90 imminent danger exists fails to meet the specifications and requirements of this chapter,
91 the commissioner shall immediately revoke such program's license. Upon issuance of the
92 notice of revocation, if issued prior to the expiration of the closure period, the closure of
93 the program shall remain in effect. If the department issues a notice of revocation during
94 the closure period, the program shall have the right to appeal the revocation in accordance
95 with this Code section; provided, however, that the program shall remain closed until the
96 issuance of an initial decision by the Office of State Administrative Hearings or if the
97 office overturns the commissioner's emergency closure determination. If the
98 commissioner determines that the administration or conditions of the program were not
99 the cause of the minor's death or that a child's safety and welfare is not in imminent
100 danger or if the department has not issued a revocation notice within the initial closure

101 period, the commissioner shall immediately reopen the program for its continued
102 operation.

103 (2) An early care and education program that is closed pursuant to this subsection shall
104 have the right to contest the emergency closure of such program or the revocation and
105 continued emergency closure of the program in a manner consistent with Article 1 of
106 Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' and shall be
107 authorized to request an expedited hearing in accordance with this subsection and the
108 rules and regulations of the Office of State Administrative Hearings.

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

111 **SECTION 2.**

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