

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

AS PASSED

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 under certain circumstances; to revise definitions; to
4 provide for certain procedures; to provide for hearings; to provide for contesting a closure;
5 to provide 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 providing notice of intended emergency closure of an early care and education program.

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 upon notice of intended emergency closure of a program in accordance with
22 Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'

23 (b)(1) The commissioner or his or her designee may order the emergency placement of
24 a monitor or monitors in an early care and education program upon a finding that rules
25 and 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)~~(A) The program is operating without a license, commission, or registration;

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

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

34 ~~(c)~~(2) A monitor may be placed in a program for no more than ten consecutive calendar
 35 days, during which time the monitor shall observe conditions and regulatory compliance
 36 with 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
 41 travel and subsistence allowance as defined by department policy of placing a monitor
 42 in a program shall be reimbursed to the department by the program, unless the order
 43 placing the monitor is determined to be invalid in a contested case or by final
 44 adjudication by a court of competent jurisdiction, in which event the cost shall be paid
 45 by the department.

46 (c)(1) The commissioner or his or her designee may issue an order providing notice of
 47 intended emergency closure of an early care and education program:

48 (A) Upon the death of a minor at such program, unless such death was medically
 49 anticipated or no serious rule violations related to the death by the program were
 50 determined by the department; or

51 (B) Where a child's safety or welfare is in imminent danger.

52 (2) If a preliminary hearing is not requested pursuant to subsection (f) of this Code
 53 section, the commissioner shall immediately close such program for a period of not more
 54 than 21 days. If a preliminary hearing is requested pursuant to subsection (f) of this Code
 55 section, the commissioner may place a monitor in the program until the Office of
 56 Administrative Hearings issues a decision, which shall be considered the final decision
 57 of the agency, on the emergency closure. If the Office of Administrative Hearings finds
 58 that the emergency closure is warranted, the commissioner shall immediately close such
 59 program for a period of not more than 21 days. If the Office of Administrative Hearings
 60 finds that the emergency closure is not warranted, the commissioner shall not order the
 61 emergency closure of the program, but may continue investigating the incident and may
 62 place a monitor in the program in accordance with this Code section.

63 (3) Upon a closure, the program shall be required to immediately notify the parent or
 64 guardian of each child enrolled in the program. Upon a closure, the commissioner or his
 65 or her designee shall immediately conduct a review into the circumstances of the minor's
 66 death or the circumstances where a child's safety or welfare is in imminent danger. If the
 67 commissioner determines that the program where such minor's death occurred or where
 68 imminent danger exists fails to meet the specifications and requirements of this chapter,
 69 the commissioner shall immediately revoke such program's license in accordance with
 70 subsection (o) of Code Section 20-1A-10. The program shall have the right to appeal the
 71 revocation in accordance with subsection (o) of Code Section 20-1A-10; provided,
 72 however, that the program shall remain closed until the appeal decision is issued. If the
 73 commissioner determines that the administration or conditions of the program were not
 74 the cause of the minor's death or that a child's safety and welfare is not in imminent
 75 danger or if the department has not issued a revocation notice within the initial closure
 76 period, the commissioner shall immediately reopen the program for its continued
 77 operation.

78 (d) An emergency order shall contain the following:

- 79 (1) The scope of the order;
 80 (2) The reasons for the issuance of the order;
 81 (3) The effective date of the order if other than the date the order is issued;
 82 (4) The person to whom questions regarding the order are to be addressed; and
 83 (5) Notice of the right to a preliminary hearing.

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

88 (f) A request for a preliminary hearing shall be made in writing within ~~five days~~ 48 hours
 89 from the time of service, excepting weekends. The request ~~must~~ shall be made to the
 90 representative of the department designated in the order and may be made in person, by
 91 facsimile, by e-mail, or by any other means designated in the order. ~~Unless a request is~~
 92 ~~made to appear in person, the preliminary hearing shall consist of an administrative review~~
 93 ~~of the record, written evidence submitted by the early care and education program affected,~~
 94 ~~and a preliminary written argument in support of its contentions.~~

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

98 ~~(h)~~(g) Upon receipt of a request for a preliminary hearing, the department shall
 99 immediately forward the request to the Office of State Administrative Hearings, which

100 shall set and give notice of the date, time, and location of the preliminary hearing. The
 101 preliminary hearing shall be held as soon as possible after a request therefor but in no event
 102 later than ~~72~~ 48 hours after such request, provided that a program may request that such
 103 hearing be held earlier and that in no event shall a hearing be held on a weekend or holiday.
 104 ~~(i)(h)~~ If a ~~personal appearance~~ hearing is requested, the preliminary hearing shall consist
 105 of a review of ~~the all oral and written evidence in the record, any additional evidence~~
 106 introduced at the hearing; and any arguments made. A recording shall be made of the
 107 hearing.

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

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

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

116 **SECTION 2.**

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