

1 § [~~\_\_\_\_\_ IMMUNITY FROM LIABILITY IN CHILD~~  
2 ~~\_\_\_\_\_ WELFARE INVESTIGATIONS]~~ GOVERNMENTAL IMMUNITY AMENDMENTS §

3 2002 GENERAL SESSION

4 STATE OF UTAH

5 Sponsor: Wayne A. Harper

6 This act amends the Human Services Code § AND THE UTAH GOVERNMENTAL IMMUNITY ACT § . The  
6a act provides that there is no immunity to

7 governmental employee child welfare workers who act or fail to act through fraud or malice  
8 or who commit perjury. § THE ACT CLARIFIES PROVISIONS REGARDING THE EXCEPTION TO EMPLOYEE  
8a IMMUNITY FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL. THE ACT PROVIDES AN EXCEPTION TO THE  
8b IMMUNITY OF A GOVERNMENTAL EMPLOYEE FOR PERJURY. §

9 This act affects sections of Utah Code Annotated 1953 as follows:

10 AMENDS:

11 62A-4a-410, as last amended by Chapter 302, Laws of Utah 1995

11a § 63-30-4, as last amended by Chapter 76, Laws of Utah 1991

11b 63-30-36, as last amended by Chapter 76, Laws of Utah 1991 §

12 *Be it enacted by the Legislature of the state of Utah:*

13 Section 1. Section 62A-4a-410 is amended to read:

14 62A-4a-410. Immunity from liability.

15 (1) Any person, official, or institution participating in good faith in making a report, taking  
16 photographs or X-rays, assisting an investigator from the division, serving as a member of a child  
17 protection team, or taking a child into protective custody pursuant to this part, is immune from any  
18 liability, civil or criminal, that otherwise might result by reason of those actions.

19 (2) This section does not provide immunity with respect to acts or omissions of a  
20 governmental employee § ~~if it is established § THROUGH AN ADMINISTRATIVE DUE PROCESS~~  
20a ~~HEARING, AS PROVIDED BY SECTION 67-19a-406, OR A DISTRICT COURT PROCEEDING~~ §  
20b ~~that:~~

21 ~~\_\_\_\_\_ (a) the employee acted or failed to act under Subsection (1) through fraud or malice, in~~  
22 ~~accordance with Subsections 63-30-4(3)(b) or (4); or~~

23 ~~\_\_\_\_\_ (b) in a judicial or administrative proceeding the employee intentionally or knowingly]. §~~



24 § ~~[ gave, upon a lawful oath or in any form allowed by law as a substitute for an oath, false~~  
 24a ~~testimony~~

25 ~~material to the issue or matter of inquiry under Subsection (1).]~~ **EXCEPT AS PROVIDED IN TITLE 63,**  
 25a **CHAPTER 30, UTAH GOVERNMENTAL IMMUNITY ACT.**

25b Section 2. Section 63-30-36 is amended to read:

25c 63-30-4. Act provisions not construed as admission or denial of liability -- Effect of waiver of  
 25d immunity -- Exclusive remedy -- Joinder of employee -- Limitations on personal liability.

25e (1) (a) Nothing contained in this chapter, unless specifically provided, may be construed as an  
 25f admission or denial of liability or responsibility by or for governmental entities or their employees.

25g (b) If immunity from suit is waived by this chapter, consent to be sued is granted, and liability  
 25h of the entity shall be determined as if the entity were a private person.

25i (c) No cause of action or basis of liability is created by any waiver of immunity in this chapter,  
 25j nor may any provision of this chapter be construed as imposing strict liability or absolute liability.

25k (2) Nothing in this chapter may be construed as adversely affecting any immunity from suit  
 25l that a governmental entity or employee may otherwise assert under state or federal law.

25m (3) (a) Except as provided in Subsection (3)(b), an action under this chapter against a  
 25n governmental entity or its employee for an injury caused by an act or omission that occurs during the  
 25o performance of the employee's duties, within the scope of employment, or under color of authority is  
 25p a plaintiff's exclusive remedy.

25q (b) A plaintiff may not bring or pursue any other civil action or proceeding based upon the  
 25r same subject matter against the employee or the estate of the employee whose act or omission gave  
 25s rise to the claim, unless:

25t (i) the employee acted or failed to act through fraud or malice; [or]

25u (ii) the injury or damage resulted from the conditions set forth in Subsection 63-30-36 (3)(c)[-];

25v **OR**

25w **(iii) IN A JUDICIAL OR ADMINISTRATIVE PROCEEDING THE EMPLOYEE INTENTIONALLY OR**  
 25x **KNOWINGLY GAVE, UPON A LAWFUL OATH OR IN ANY FORM ALLOWED BY LAW AS A SUBSTITUTE**  
 25y **FOR AN OATH, FALSE TESTIMONY MATERIAL TO THE ISSUE OR MATTER OF INQUIRY UNDER THIS**  
 25z **SECTION.**

25aa (4) An employee may be joined in an action against a governmental entity in a representative  
 25ab capacity if the act or omission complained of is one for which the governmental entity may be liable,  
 25ac but no employee may be held personally liable for acts or omissions occurring during the  
 25ad performance of the employee's duties, within the scope of employment, or under color of authority,  
 25ae unless it is established that:

25af (a) the employee acted or failed to act due to fraud or malice[-];

25ag **(b) THE INJURY OR DAMAGE RESULTED FROM THE CONDITIONS SET FORTH IN**  
 25ah **SUBSECTION 63-30-36(3)(c); OR**

25ai **(c) IN A JUDICIAL OR ADMINISTRATIVE PROCEEDING THE EMPLOYEE INTENTIONALLY OR**  
 25aj **KNOWINGLY GAVE, UPON A LAWFUL OATH OR IN ANY FORM ALLOWED BY LAW AS A SUBSTITUTE**  
 25ak **FOR AN OATH, FALSE TESTIMONY MATERIAL TO THE ISSUE OR MATTER OF INQUIRY UNDER THIS**  
 25al **SECTION.**

25am Section 3. Section 63-30-36 is amended to read:

25an 63-30-36. Defending government employee -- Request -- Cooperation -- Payment of judgment. §

- 25ao            § (1) Except as provided in Subsections (2) and (3), a governmental entity shall defend  
25ap any action brought against its employee arising from an act or omission occurring:
- 25aq            (a) during the performance of the employee's duties;
- 25ar            (b) within the scope of the employee's employment; or
- 25as            (c) under color of authority.
- 25at            (2) (a) Before a governmental entity may defend its employee against a claim, the employee  
25au shall make a written request to the governmental entity to defend him:
- 25av            (i) within ten days after service of process upon him; or
- 25aw            (ii) within a longer period that would not prejudice the governmental entity in maintaining a  
25ax defense on his behalf; or
- 25ay            (iii) within a period that would not conflict with notice requirements imposed on the entity in  
25az connection with insurance carried by the entity relating to the risk involved.
- 25ba            (b) If the employee fails to make a request, or fails to reasonably cooperate in the defense, the  
25bb governmental entity need not defend or continue to defend the employee, nor pay any judgment,  
25bc compromise, or settlement against the employee in respect to the claim.
- 25bd            (3) The governmental entity may decline to defend, or subject to any court rule or order,  
25be decline to continue to defend, an action against an employee if it determines:
- 25bf            (a) that the act or omission in question did not occur:
- 25bg            (i) during the performance of the employee's duties;
- 25bh            (ii) within the scope of his employment; or
- 25bi            (iii) under color of authority;
- 25bj            (b) that the injury or damage resulted from the fraud or malice of the employee; or
- 25bk            (c) that the injury or damage on which the claim was based resulted from:
- 25bl            (i) the employee driving a vehicle, or being in actual physical control of a vehicle:
- 25bm            (A) with a blood alcohol content equal to or greater by weight than the established legal limit;
- 25bn            (B) while under the influence of alcohol or any drug to a degree that rendered the person  
25bo incapable of safely driving the vehicle; or
- 25bp            (C) while under the combined influence of alcohol and any drug to a degree that rendered the  
25bq person incapable of safely driving the vehicle; or
- 25br            (ii) the employee being physically or mentally impaired so as to be unable to reasonably  
25bs perform his job function because of the use of alcohol, because of the nonprescribed use of a  
25bt controlled substance as defined in Section 58-37-4, or because of the combined influence of alcohol  
25bu and a nonprescribed controlled substance as defined by Section 58-37-4[-]; OR
- 25bv            (d) THAT IN A JUDICIAL OR ADMINISTRATIVE PROCEEDING THE EMPLOYEE  
25bw INTENTIONALLY OR KNOWINGLY GAVE, UPON A LAWFUL OATH OR IN ANY FORM ALLOWED BY  
25bx LAW AS A SUBSTITUTE FOR AN OATH, FALSE TESTIMONY TO THE ISSUE OR MATTER OF INQUIRY  
25by UNDER THIS SECTION.
- 25bz            (4) (a) Within ten days of receiving a written request to defend an employee, the governmental  
25ca entity shall inform the employee whether or not it shall provide a defense, and, if it refuses to provide  
25cb a defense, the basis for its refusal.
- 25cc            (b) A refusal by the entity to provide a defense is not admissible for any purpose in the action  
25cd in which the employee is a defendant.
- 25ce            (5) Except as provided in Subsection (6), if a governmental entity conducts the defense of an  
25cf employee, the governmental entity shall pay any judgment based upon the claim. §

25cg            § (6) A governmental entity may conduct the defense of an employee under a reservation of  
25ch rights under which the governmental entity reserves the right not to pay a judgment, if the conditions  
25ci set forth in Subsection (3) are established.

25cj            (7) (a) Nothing in this section or Section 63-30-37 affects the obligation of a governmental  
25ck entity to provide insurance coverage according to the requirements of Subsection 41-12a-301 (3) and  
25cl Section 63-30-29.5.

25cm            (b) When a governmental entity declines to defend, or declines to continue to defend, an  
25cn action against its employee under the conditions set forth in Subsection (3), it shall still provide  
25co coverage up to the amount specified in Sections 31A-22-304 and 63-30-29.5. §

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**Legislative Review Note**  
**as of 11-14-01 4:07 PM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**

**Committee Note**

The Health and Human Services Interim Committee recommended this bill.