

**CIVIL CAUSE OF ACTION AGAINST
CERTAIN CHILD CARE WORKERS**

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: Matt Throckmorton

AN ACT RELATING TO GOVERNMENT IMMUNITY; CREATING A CAUSE OF ACTION
FOR ACTIONS BY CERTAIN CHILD PROTECTION EMPLOYEES.

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

ENACTS:

62A-4a-105.3, Utah Code Annotated 1953

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

Section 1. Section **62A-4a-105.3** is enacted to read:

62A-4a-105.3. Cause of action against certain child protection employees.

(1) As used in this section:

(a) "Actual fraud" means any of the following acts committed with intent to deceive:

(i) the suggestion, as a fact, of that which is not true by one who does not believe it to be true;

(ii) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though the person believes it is true;

(iii) the suppression of that which is true by one having knowledge or belief of the fact;

(iv) a promise made without any intention of performing it; or

(v) any other act committed with intent to deceive.

(b) "Child protection employee" means:

(i) any person employed by the Division of Child and Family Services who provides protective services as defined in Section 62A-4a-101; and

(ii) any person employed by the Division of Child and Family Services who provides services relating to substitute care as defined in Section 62A-4a-101.

28 (c) "Constructive fraud" means:

29 (i) a breach of duty by a child protection employee without actual fraudulent intent that
30 gains an advantage to the employee by misleading another about the employee's prejudice; or

31 (ii) any other act or omission declared by the law to be fraud that does not rise to the level
32 of actual fraud.

33 (d) "Duress" means:

34 (i) unlawful confinement of a person, the husband or wife of the person, or of the ancestor,
35 descendant, or adopted child of the person or their husband or wife;

36 (ii) unlawful detention of the property of a person identified in Subsection (1)(d)(i);

37 (iii) confinement of a person identified in Subsection (1)(d)(i) that is lawful in form, but

38 is:

39 (A) fraudulently obtained; or

40 (B) fraudulently made unjustly harassing or oppressive.

41 (e) "Maliciously" means conduct that is:

42 (i) intended by a child protection employee to cause injury to a person; or

43 (ii) conduct by a child protection employee that constitutes a willful and conscious
44 disregard of the rights or safety of others.

45 (f) "Undue influence" means the situation created when:

46 (i) a person reposes a confidence in a child protection employee and the employee uses that
47 confidence or authority for the purpose of obtaining an unfair advantage over the person;

48 (ii) a child protection employee who holds real or apparent authority over a person uses
49 that confidence or authority for the purpose of obtaining an unfair advantage over the person;

50 (iii) a child protection employee takes unfair advantage of another's weakness of mind; or

51 (iv) a child protection employee takes a grossly oppressive and unfair advantage of
52 another's necessities or distress.

53 (2) (a) Notwithstanding any immunity established by Title 63, Chapter 30, Governmental
54 Immunity Act, any person injured by any of the acts identified in Subsection (2)(b) may bring a
55 civil action against the child protection employee who commits any of the acts specified in
56 Subsection (2)(b).

57 (b) A child protection employee is civilly and personally liable if the employee:

58 (i) commits perjury;

- 59 (ii) fabricates evidence;
- 60 (iii) maliciously fails to disclose known exculpatory evidence;
- 61 (iv) obtains testimony by actual fraud; or
- 62 (v) maliciously obtains testimony by constructive fraud, duress, or undue influence.

Legislative Review Note
as of 1-14-00 3:00 PM

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

Office of Legislative Research and General Counsel