

1 **IMMUNITY FOR FOSTER CARE REFERRAL**

2 2000 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: John E. Swallow**

5 AN ACT RELATING TO HUMAN SERVICES; EXTENDING IMMUNITY TO
6 ORGANIZATIONS THAT CONTRACT WITH THE STATE TO RECRUIT AND TRAIN
7 FOSTER CARE PARENTS AND VOLUNTEERS ON MATTERS THAT THE STATE
8 RETAINS ULTIMATE AUTHORITY AND RESPONSIBILITY.

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

10 AMENDS:

11 **62A-4a-107.5**, as enacted by Chapter 370, Laws of Utah 1998

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

13 Section 1. Section **62A-4a-107.5** is amended to read:

14 **62A-4a-107.5. Private recruitment and training of foster care parents and child**
15 **welfare volunteers -- Extension of immunity.**

16 (1) The division may contract with one or more private, nonprofit organizations to recruit
17 and train foster care parents and child welfare volunteers on a statewide or regional basis.

18 (2) An organization that contracts with the division pursuant to Subsection (1) shall agree
19 to:

20 (a) increase the number of licensed and trained foster care parents in the geographic area
21 covered by:

22 (i) developing a strategic plan;

23 (ii) assessing the needs, perceptions, and qualities of potential foster care parents;

24 (iii) assessing the needs, perceptions, and qualities of children in state custody;

25 (iv) identifying potential foster care parents through public and private resources;

26 (v) screening foster care parent applicants;

27 (vi) providing preservice, ongoing, and customized training to foster care parents;

- 28 (vii) developing a competency-based training curriculum with input from public and
29 private resources and approved by the division;
- 30 (viii) focusing training exercises on skill development; and
- 31 (ix) supporting foster care parents by supplying staff support, identifying common issues,
32 encouraging peer support, and connecting available resources;
- 33 (b) increase the number of child welfare volunteers in the geographical area covered by:
- 34 (i) developing a strategic plan;
- 35 (ii) seeking the participation of established volunteer organizations;
- 36 (iii) designing and offering initial orientation sessions to child welfare volunteers;
- 37 (iv) informing volunteers of options for service as specified by the division; and
- 38 (v) facilitating the placement and certification of child welfare volunteers;
- 39 (c) coordinate efforts, where appropriate, with the division;
- 40 (d) seek private contributions in furtherance of the organization's activities under this
41 Subsection (2);
- 42 (e) perform other related services and activities as may be required by the division; and
- 43 (f) establish a system for evaluating performance and obtaining feedback on the activities
44 performed pursuant to this Subsection (2).
- 45 (3) Notwithstanding Subsection (2), the department shall retain ultimate authority over and
46 responsibility for:
- 47 (a) training materials and training techniques used by an organization; and
- 48 (b) screening, investigation, licensing, and placement decisions with respect to any person
49 recruited or trained by an organization.
- 50 (4) (a) An organization and its agents, whether compensated or not, may not be held civilly
51 liable for any act or omission on a matter for which the department retains ultimate authority over
52 and responsibility for, including:
- 53 (i) the use of any department-approved training materials or techniques; and
- 54 (ii) any screening, investigation, licensing, or placement decision made by the department
55 with respect to any person recruited or trained by the organization if the organization and its agents
56 were without actual knowledge of any substantiated fact that would have disqualified the person
57 as a foster parent or child welfare volunteer at the time that the organization referred the person
58 to the department.

59 (b) Nothing in Subsection (4)(a) may be construed as altering the child abuse and neglect
60 reporting requirements of Section 62A-4a-403, regardless of whether the facts that give rise to such
61 a report occur before or after a screening, investigation, licensing, or placement decision of the
62 department.

63 [(4)] (5) A referring entity or a referring individual that voluntarily and without
64 remuneration assists the organization to identify and recruit foster care parents or child welfare
65 volunteers is not liable in any civil action for any act or omission of:

66 (a) the referring entity or the referring individual, which is performed in good faith and in
67 furtherance of the entity's assistance to the organization; or

68 (b) any person directly or indirectly referred to the organization by the entity as a foster
69 care parent or child welfare volunteer, if the referring individual was without actual knowledge of
70 any substantiated fact that would have disqualified the person from such a position at the time the
71 referral was made.

72 [(5)] (6) As used in this section:

73 (a) "referring entity" means:

74 (i) an incorporated or unincorporated organization or association whether formally
75 incorporated or otherwise established and operating for religious, charitable, or educational
76 purposes which does not distribute any of its income or assets to its members, directors, officers,
77 or other participants;

78 (ii) any organization which is described in Section 501(c)(3) of the Internal Revenue Code
79 of 1986 and is exempt from tax under Section 501 of the Internal Revenue Code; or

80 (iii) any not-for-profit organization which is formed and conducted for public benefit and
81 operated primarily for charitable, civic, educational, religious, benevolent, welfare, or health
82 purposes; and

83 (b) "referring individual" means an individual:

84 (i) with the authority to act on behalf of a referring entity in making a referral; and

85 (ii) who may or may not be compensated by the referring entity.

Legislative Review Note**as of 2-2-00 1:28 PM**

This legislation raises the following constitutional or statutory concerns:

This bill extends immunity from civil suit to organizations that contract with the state to recruit and train foster parents and child welfare volunteers. The extent of the immunity is limited to matters over which the Department of Human Services retains "ultimate authority over and responsibility for." As such, the bill could be viewed as a clarification of the principles of comparative negligence set forth in Section 78-27-38 with respect to the type of fault that should or should not be apportioned to an organization.

Nevertheless, because the bill extends immunity, it may be subject to legal challenge under Article I, Section 11, the Open Courts Provision of the Utah State Constitution. To be successful, a challenger would have to show that the bill (1) abrogates or restricts an action that existed at Utah common law, (2) fails to provide an effective and reasonable alternative remedy by due course of law, and (3) does not represent a reasonable, non-arbitrary way of eliminating a clear social or economic evil. See *Berry v. Beech Aircraft Corp.*, 717 P.2d 670 (Utah 1985) (plurality opinion); *Condemarin v. University Hospital*, 775 P.2d 348 (Utah 1989) (plurality opinion).

Office of Legislative Research and General Counsel