

CONSTITUTIONAL RIGHTS OF STATE

EMPLOYEES

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Mike Thompson

This act modifies the State Officers and Employees Code and the Utah Human Services Code to prohibit the Board of Child and Family Services and state agencies from requiring a person to relinquish any right guaranteed under the United States Constitution or the Utah Constitution in order to obtain or maintain foster parent status or state employment.

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

AMENDS:

62A-4a-102, as last amended by Chapter 208, Laws of Utah 2000

67-19-4, as last amended by Chapter 375, Laws of Utah 1997

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

Section 1. Section **62A-4a-102** is amended to read:

62A-4a-102. Board of Child and Family Services.

(1) (a) The Board of Child and Family Services, created in accordance with this section and with Sections 62A-1-105 and 62A-1-107, is responsible for establishing by rule, pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the policy of the division in accordance with the requirements of this chapter and Title 78, Chapter 3a, Juvenile Court Act of 1996, regarding abuse, neglect, and dependency proceedings, youth services, and domestic violence services. The board is responsible to see that the legislative purposes for the division are carried out.

(b) (i) Effective July 1, 1994, the governor shall appoint, with the advice and consent of the Senate, 11 members to the Board of Child and Family Services.

(ii) Except as required by Subsection (1)(b)(iii), as terms of current board members expire, the governor shall appoint each new member or reappointed member to a four-year term.

(iii) Notwithstanding the requirements of Subsection (1)(b)(ii), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board

members are staggered so that approximately half of the board is appointed every two years.

(c) Two members of the board shall be persons who are or have been consumers, two members of the board shall be persons who are actively involved in children's issues specifically related to abuse and neglect, one member shall be a licensed foster parent, one member shall be a recognized expert in the social, developmental, and mental health needs of children, one member shall be a physician licensed to practice medicine in this state who is also a board certified pediatrician and who is an expert in child abuse and neglect, and one member shall be an adult relative of a child who is or has been in the foster care system.

(d) Six members of the board are necessary to constitute a quorum at any meeting.

(e) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(2) (a) Members shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(b) Members may decline to receive per diem and expenses for their service.

(3) The board shall:

(a) approve fee schedules for programs within the division;

(b) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, establish, by rule, policies to ensure that private citizens, consumers, foster parents, private contract providers, allied state and local agencies, and others are provided with an opportunity to comment and provide input regarding any new policy or proposed revision of an existing policy; and

(c) provide a mechanism for systematic and regular review of existing policy and for consideration of policy changes proposed by the persons and agencies described in Subsection (3)(b).

(4) (a) The board shall establish a three-member Consumer Hearing Panel to act independently of the board and the division, and to be the sole and final decision-making body to hear, resolve, and make recommendations regarding consumer complaints relating to the division. The board may appoint two alternates to serve on the Consumer Hearing Panel in the event that one or more of the members is unable to serve at any given time. This section does not restrict or limit

access to the courts for any person, or override Title 62A, Chapter 2, Licensure of Programs and Facilities, or Title 67, Chapter 19, Utah State Personnel Management Act.

(b) The Consumer Hearing Panel may not include any employees of the division.

(c) Prior to July 1, 2000, the Consumer Hearing Panel shall establish procedures that:

(i) provide for reasonable notice of panel hearings to the appropriate consumers;

(ii) require both the division and the consumer to present their respective information, testimony, or evidence at the same hearing unless, after reasonable notice, the consumer fails or refuses to appear at the scheduled panel hearing; and

(iii) affirm the right of affected consumers to be provided with pertinent information regarding the substance of the division's position, testimony, or evidence either prior to or at the scheduled panel hearing.

(d) The Consumer Hearing Panel shall report its recommendations to the board, the division, and the Legislative Oversight Panel described in Section 62A-4a-207. The division shall comply with the recommendations of the Consumer Hearing Panel.

(e) The department shall provide staff to the Consumer Hearing Panel.

(f) (i) Members of the panel shall receive a per diem allowance for each day or portion of a day spent in performing the duties of the panel, and shall be reimbursed for all necessary travel expenses.

(ii) The per diem reimbursement described in Subsection (4)(f)(i) may not exceed 75 days for any one individual panel member in any fiscal year.

(5) The board may create state advisory committees to advise it concerning programs offered by the Division of Child and Family Services. The board shall provide each committee with a specific charge in writing.

(6) The board shall establish policies for the determination of eligibility for services offered by the division in accordance with this chapter. The division may, by rule, establish eligibility standards for consumers.

(7) The board shall adopt and maintain rules and policies regarding placement for adoption or foster care that are consistent with, and no more restrictive than, applicable statutory provisions.

(8) The board may not, by rule or by any other means, require any person to relinquish any right guaranteed under the United States Constitution or the Utah Constitution in order to obtain or maintain foster parent status.

Section 2. Section **67-19-4** is amended to read:

67-19-4. Discriminatory or unfair employment practices.

(1) The state, its officers, and employees shall be governed by the provisions of Section 34A-5-106 of the Utah Antidiscrimination Act concerning discriminatory or unfair employment practices.

(2) An agency may not, by rule or by any other means, require any person to relinquish any right guaranteed under the United States Constitution or the Utah Constitution in order to obtain or maintain state employment.