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Trick or Treat: The Application of the State UDAP Statutes to Government Agencies in the Florida Dependency Process

Michael Flynn*

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TRICK OR TREAT: THE APPLICATION OF THE STATE UDAP STATUTES TO GOVERNMENT AGENCIES IN THE FLORIDA DEPENDENCY PROCESS

MICHAEL FLYNN*

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I. INTRODUCTION

The State of Florida is a leader in many respects. Florida is number one in beaches;¹ number one in tropical hurricanes² and lightning strikes;³ and at or near the top per capita in mishandling abandoned, abused, and neglected children.⁴ Florida actually spends more money on the

* Professor of Law, Nova Southeastern University Law School. The author thanks research assistants Marisa Goldberg Wiggins, Joe H. Baldelomar, and Professor Michael Dale for their help in the preparation of this article.

1. *The Best Beach in America, Siesta Beach*, DR. BEACH (2010), <http://www.drbeach.org/top10beaches.htm>.

2. ERIC S. BLAKE ET AL., NAT'L OCEANIC & ATMOSPHERIC ADMIN., THE DEADLIEST, COSTLIEST, AND MOST INTENSE UNITED STATES TROPICAL CYCLONES FROM 1851 TO 2004 (AND OTHER FREQUENTLY REQUESTED HURRICANE FACTS) 15-16 (2005), *available at* <http://www.nhc.noaa.gov/pdf/NWS-TPC-4.pdf>.

3. Betsy Crisp, *When Lightning Strikes*, U. FLA. IFAS EXTENSION, <http://pasco.ifas.ufl.edu/fcs/Lightning.shtml> (last visited Nov. 10, 2013).

4. *See* Sofia Santana, *Report: Florida Child Death Rate High*, SUN-SENTINEL, Oct. 21, 2009, at B.8; *see also* J. KATE STOWELL, THE POLICY GRP. FOR FLA.'S FAMILIES & CHILDREN, THE STATE OF FLORIDA'S CHILD: A REPORT FOR THE FLORIDA CHILDREN AND YOUTH CABINET 5 (2009), *available at* http://childrensmovementflorida.org/issues/children/the_state_of_floridas_child_report.pdf; Nat'l Kids Count, *Kids Count Overall Rank*, KIDS COUNT DATA CTR., <http://datacenter.kidscount.org/data/tables/7288-kids-count-overall-rank?loc=11&loct=2#detailed/2/11/false/36,868/any/14344> (last updated June 2013).

incarceration of children than on the education of children.⁵ With tens of thousands of children in the dependency system in Florida every year, the legal system and child protective services system are stressed.⁶ One glaring weakness in the Florida process is that each dependent child is not provided a lawyer for representation, except in exceptional circumstances.⁷ Although a minority of states fail to provide a dependent child his or her own lawyer, in Florida, it is actually much worse.⁸ Take the following example.

Billy is a fourteen-year-old ninth grade high school student. Along with his ten-year-old brother, Stevie, Billy lives with his mother, Julie, and his stepfather, Dave, who have been married for seven years. Billy's biological father abandoned Billy, his mother, and little brother many years ago. Billy, his mother, and little brother have had a hard life. Billy's mother, Julie, did not graduate high school and has never held a steady job. Until she met and married Dave, Julie regularly relied on government benefits to help feed, house, and clothe herself and her children.

When Julie married Dave, things changed. Dave is a carpenter who—until the recent downturn in the housing market—had steady work, made enough money for the family to buy a small house, and provided for the children. With the downturn in the housing market, Dave began losing work. The family struggled to pay the bills despite Dave's best efforts to find work. The financial pressure finally got to Dave and he began drinking more heavily. Julie took a job at a fast food restaurant to try to help out. This resulted in many nights of Dave coming home late, drunk, and picking arguments with Julie. These arguments got progressively worse when Dave started physically hitting Julie. When Billy tried to stop Dave from striking Julie, Dave hit Billy too.

This kind of physical violence continued for several months until one day, the high school physical education teacher noticed the bruising and

5. *Education vs Prison Costs*, CNN MONEY, <http://www.money.cnn.com/infographic/economy/education-vs-prison-costs/> (last visited Nov. 10, 2013).

6. See FLA. GUARDIAN AD LITEM PROGRAM, FLORIDA GUARDIAN AD LITEM PROGRAM 2011 ANNUAL REPORT 1, 5, 7 (2011), available at <http://www.guardianadlitem.org/documents/GALAnnualReport2011.pdf>.

7. See FLA. R. JUV. P. 8.217(a)–(b); *In re Interest of D.B. & D.S.*, 385 So. 2d 83, 87 (Fla. 1980) (citing *Potvin v. Keller*, 313 So. 2d 703, 705–06 (Fla. 1975)); Michael J. Dale & Louis M. Reidenberg, *Providing Attorneys for Children in Dependency and Termination of Parental Rights Proceedings in Florida: The Issue Updated*, 35 NOVA L. REV. 305, 327–28 (2011).

8. See CHILDREN'S ADVOCACY INST. ET AL., A CHILD'S RIGHT TO COUNSEL: A NATIONAL REPORT CARD ON LEGAL REPRESENTATION FOR ABUSED & NEGLECTED CHILDREN 16, 18–20, 45–46 (3d ed. 2012), available at www.caichildlaw.org/Misc/3rd_Ed_Childs_Right_to_Counsel.pdf.

scarring on Billy's face, which could not have been from football or wrestling practice. The high school teacher called child protective services to report what he saw. Child protective services, after investigating—and over the objection of Billy—removed both Billy and Stevie from the home where Julie and Dave lived, and placed both boys in foster care.

In the time period before the dependency court hearing, Billy, who was at best confused by what was happening, was approached by child protective service caseworkers. Billy was told—and received a business card stating—that the lawyers representing the child protective services government agency were part of the “Law Firm for Florida’s Children.”⁹ Further, Billy received a visit from a guardian ad litem who told Billy that the Guardian Ad Litem Program (“GAL Program”) would represent Billy’s legal interests. Billy has consistently maintained that he wants to go back home to be with his brother, his mother, and Dave, despite what Dave did to him and his mother. Billy believed in his heart that the family, with help, could be together again. Billy relied on the representations made by the child protective services’ caseworker and the guardian ad litem that Billy’s wish to reunite his family would be represented in court by both. Billy, therefore, had no idea that he might want to hire a lawyer, or that he might need to hire a lawyer, or that it might be in his best interest to hire a lawyer. Billy thought he was covered.

Such, of course, is not the case in Florida specifically, nor in other states.¹⁰ The state government agency involved in child protective services, the Department of Children and Families (“DCF”) in Florida, is, in fact, the petitioner who brings a dependency petition on behalf of the state, and is not authorized to, and does not, act as the lawyer for an alleged dependent child.¹¹ Further, in Florida, the guardian ad litem is a representative of the statewide GAL Program.¹² The Florida GAL Program is a separate party to the dependency proceeding.¹³ Consequently, the GAL Program does not provide legal services or representation for an alleged dependent child.¹⁴ Needless to say, Billy appeared in court without a lawyer and watched as both the DCF and the GAL Program advocated for Billy and Stevie to be permanently removed from their home with their mother and Dave. No

9. See Dale & Reidenberg, *supra* note 7, at 334.

10. See, e.g., CHILDREN’S ADVOCACY INST. ET AL., *supra* note 8, at 41, 45, 52.

11. See FLA. STAT. §§ 39.01(21), .501(1) (2013); see also Dale & Reidenberg, *supra* note 7, at 327.

12. FLA. STAT. § 39.820(1); Dale & Reidenberg, *supra* note 7, at 327, 331.

13. See Dale & Reidenberg, *supra* note 7, at 334.

14. *Id.* at 327; see also Statewide Guardian Ad Litem Office v. Office of State Att’y Twentieth Judicial Circuit, 55 So. 3d 747, 750 (Fla. 2d Dist. Ct. App. 2011).

lawyer advocated on behalf of Billy, and Billy was removed from his mother and stepfather's home and separated from his younger brother Stevie.

The purpose of this article is not to revisit the legal catastrophe that is Florida's child protective services state agency and its GAL Program.¹⁵ It is clear that Florida's DCF is systematically ineffective and the Florida GAL Program is legally impotent when it comes to providing legal representation for children in dependency proceedings.¹⁶ It has already been proven so!¹⁷ Further, this article is not designed to call into question the unselfish commitment of so many volunteer guardian ad litem and others who act with good intentions to protect abandoned, abused, and neglected children in Florida.¹⁸ Rather, the purpose of this article is very different.

The design of this article is to suggest that perhaps—using Florida as an example—one unexplored avenue to clean up and boost the effectiveness of the government agencies involved in the dependency process is to first require that these agencies not unfairly or deceptively lure unsuspecting children into believing that their legal rights are in any way protected in a dependency proceeding by these government agencies.¹⁹

Therefore, this article begins with examining whether or not state agencies—in particular the child protective services state agencies—can be subject to prosecution under state unfair and deceptive trade practice statutes.²⁰ The first part of this article will outline the fundamental concepts that define a cause of action for an unfair or deceptive trade practice.²¹ Next, this article will examine whether such state consumer protection laws have ever been applied to government entities and activities.²² Then, this article will analyze if an alleged dependent child could successfully maintain a cause of action for an unfair or deceptive trade practice against these child protective services government agencies when the state agencies

15. See Dale & Reidenberg, *supra* note 7, at 334–35.

16. Michael J. Dale, *Providing Counsel to Children in Dependency Proceedings in Florida*, 25 NOVA L. REV. 769, 773 (2001); Dale & Reidenberg, *supra* note 7, at 334; see also *Statewide Guardian Ad Litem Office*, 55 So. 3d at 750.

17. See FLA. GUARDIAN AD LITEM PROGRAM, *supra* note 6, at 5.

18. See Dale & Reidenberg, *supra* note 7, at 327–28. There are roughly 9600 volunteer guardian ad litem in Florida who must be applauded for their service. *Volunteer, Frequently Asked Questions*, FLA. GUARDIAN AD LITEM PROGRAM, http://www.guardianadlitem.org/vol_faq.asp (last visited Nov. 10, 2013).

19. See *infra* Part IV.

20. See *infra* Part II.

21. *Id.*

22. See *infra* Part III.

misrepresent their role in the dependency process.²³ Finally, this article will conclude by outlining how the seemingly inapplicable state unfair and deceptive trade practice statutes may be used to protect dependent children.²⁴

II. STATE UNFAIR AND DECEPTIVE TRADE PRACTICE STATUTES

“All fifty states . . . have enacted at least one statute” designed to protect consumers from deceptive or unfair trade practices.²⁵ In most states, the Unfair and Deceptive Acts and Practices (“UDAP”) statutes unambiguously provide for a private right of action against a person or entity that commits unfair or deceptive trade practices.²⁶ These UDAP statutes routinely advise that great weight and due deference be given to the Federal Trade Commission (“FTC”) and the federal courts’ interpretation of the FTC Act as to what comprises an unfair or deceptive practice.²⁷ This deference to the FTC and the federal courts is designed to aid state courts in establishing their own judicial determination of what kind of conduct amounts to an unfair or deceptive trade practice.²⁸

The FTC Act, the FTC guidelines and policy statements, and the federal courts broadly define and construe what is an unfair or deceptive trade practice.²⁹ For example, there is federal court precedent backed by FTC policy statements that defines a deceptive trade practice as any act or practice that has the tendency or capacity to deceive.³⁰ The most recent FTC policy statement on deceptive trade practices—which has been adopted by some federal and state courts—defines a deceptive trade practice as any act or “practice that . . . is likely to [deceive] consumers acting reasonably under

23. See *infra* Part IV.

24. See *infra* Part V.

25. CAROLYN L. CARTER & JONATHAN SHELDON, UNFAIR AND DECEPTIVE ACTS AND PRACTICES 1 (8th ed. 2012).

26. *Id.* at 722.

27. *Id.* at 197; see also 15 U.S.C. § 45(n) (2012) (containing a broad and general definition).

28. CARTER & SHELDON, *supra* note 25, at 197–98. Because the FTC Act does not provide for a private right of action, it can only be interpreted to evidence “what conduct is prohibited by [the] state UDAP statute[s].” *Id.* at 197.

29. 15 U.S.C. § 45(n); *Charles of the Ritz Distribs. Corp. v. FTC*, 143 F.2d 676, 680 (2d Cir. 1944); *In re Cliffdale Assocs.*, 103 F.T.C. 110, 164–65 (1984); Letter from James C. Miller III, Chairman, Fed. Trade Comm’n, to John D. Dingell, Chairman, Comm. on Energy & Commerce, United States House of Representatives (Oct. 14, 1983), available at <http://www.ftc.gov/bcp/policystmt/ad-decept.htm>.

30. *Charles of the Ritz Distribs. Corp.*, 143 F.2d at 680.

the circumstances.”³¹ Regardless of which standard a federal or state court chooses to adopt, neither standard requires proof of intent, negligence, fraud, or even actual deception to make out a prima facie case.³² In sum, proof of a deceptive trade practice focuses on the act or practice, and whether such act or practice might mislead or deceive a person.³³ This is similar to the definition and interpretation of what constitutes an unfair trade practice.³⁴

The federal courts, including the Supreme Court of the United States, have defined and construed an unfair trade practice to include an act or practice that “offends established public policy and . . . is immoral, unethical, oppressive, unscrupulous, or . . . injurious to consumers.”³⁵ In particular, the Court endorsed such a broad and sweeping definition of an unfair trade practice because it noted that “[t]here is no [end] to human inventiveness” for those who choose to treat people unfairly.³⁶ Further, just like with deceptive trade practices, the federal courts and the FTC do not require proof of intent, negligence, fraud, or actual deception for an act or practice to be considered unfair.³⁷

The most recent version of the FTC Act and the FTC policy statements—adopted in some federal and state courts—revised the definition of an unfair trade practice.³⁸ In particular, the revised definition of an unfair

31. *In re Cliffdale Assocs.*, 103 F.T.C. at 164–65; *see also* *FTC v. Colgate-Palmolive Co.*, 380 U.S. 374, 386–87 (1965) (holding that “misrepresentation of any fact which would constitute a material factor in a purchaser’s decision whether to buy” will be deemed a deceptive trade practice); Letter from James C. Miller III, *supra* note 29.

32. *Orkin Exterminating Co. v. FTC*, 849 F.2d 1354, 1368 (11th Cir. 1988) (concluding that proof of deceptive intent is unnecessary); *Grove v. Huffman*, 634 N.E.2d 1184, 1188 (Ill. App. Ct. 1994) (quoting *Connor v. Merrill Lynch Realty, Inc.*, 581 N.E.2d 196, 202 (Ill. App. Ct. 1991)) (holding that a plaintiff is not required to prove actual deception, reliance, or fraud); *Brandon v. Winnett*, No. 01A01-9411-CH00529, 1995 WL 444385, at *5 (Tenn. Ct. App. July 28, 1995) (finding a negligent misrepresentation sufficient to render the trade practice deceptive). *But see* CAROLYN L. CARTER, NAT’L CONSUMER LAW CTR., CONSUMER PROTECTION IN THE STATES: A 50-STATE REPORT ON UNFAIR AND DECEPTIVE ACTS AND PRACTICES STATUTES 16–17 (2009), available at www.nclc.org/images/pdf/car_sales/UDAP_Report_Feb09.pdf.

33. *See Orkin Exterminating Co.*, 849 F.2d at 1368; *Brandon*, 1995 WL 444385, at *5; CARTER, *supra* note 32, at 16–17.

34. *See Spiegel, Inc. v. FTC*, 540 F.2d 287, 293 (7th Cir. 1976) (citing *FTC v. Sperry & Hutchinson Co.*, 405 U.S. 233, 244–45 n.5 (1972)).

35. *Id.* (citing *Sperry & Hutchinson Co.*, 405 U.S. at 244–45 n.5 (1972)).

36. *Sperry & Hutchinson Co.*, 405 U.S. at 240 (quoting H.R. REP. NO. 63-1142, at 19 (1914) (Conf. Rep.)).

37. *See Orkin Exterminating Co.*, 849 F.2d at 1368; *Sperry & Hutchinson Co.*, 405 U.S. at 244–45 n.5; *FTC v. Colgate-Palmolive Co.*, 380 U.S. 374, 386–87 (1965); *Spiegel*, 540 F.2d at 293 (citing *Sperry & Hutchinson Co.*, 405 U.S. at 244–45 n.5).

38. 15 U.S.C. § 45(n) (2012); *FTC v. Neovi, Inc.*, 604 F.3d 1150, 1155 (9th Cir. 2010).

trade practice requires that the act or practice “causes or is likely to cause substantial [consumer injury that cannot be] reasonably avoid[ed] by [the] consumer[] . . . and not outweighed by countervailing benefits to [the] consumer[].”³⁹

Most states adhere to one or both of these FTC and federal court-generated definitions of what constitutes an unfair or deceptive trade practice.⁴⁰ In addition, most states require that such unfair or deceptive trade practices arise in *trade or commerce*.⁴¹ *Trade or commerce* is consistently defined by UDAP statutes as any profit or non-profit oriented transaction.⁴² In essence, so long as the act or practice in question can be linked in some way to trade or commerce, the act or practice will be covered by a state UDAP statute.⁴³

III. APPLICATION OF STATE UNFAIR AND DECEPTIVE TRADE PRACTICE STATUTES TO GOVERNMENT ACTIVITIES

Countering this seemingly uninhibited coverage of UDAP statutes, most states exempt some acts or practices and some persons from the reach of UDAP statutes.⁴⁴ Common UDAP statutory exemptions include banks, savings and loan companies, insurance providers, and utility companies.⁴⁵ Prohibiting recovery against a state or other government agency is an uncommon exemption under UDAP statutes.⁴⁶ However, some states have addressed the issue via case law.⁴⁷ For example, in *Du Page Aviation Corp.*

39. *Neovi*, 604 F.3d at 1155 (quoting 15 U.S.C. § 45(n)).

40. *See* *Camacho v. Auto. Club of S. Cal.*, 42 Cal. Rptr. 3d 488, 494 & n.12 (Ct. App.), *reh'g granted and depublished by* B180134, 2006 Cal. App. LEXIS 919 (Ct. App. June 1, 2006); *State ex rel. Miller v. Cutty's Des Moines Camping Club, Inc.*, 694 N.W.2d 518, 525 (Iowa 2005); *State v. Weinschenk*, 868 A.2d 200, 206 (Me. 2005); *Tucker v. Sierra Builders*, 180 S.W.3d 109, 116 (Tenn. Ct. App. 2005).

41. *See* CARTER & SHELDON, *supra* note 25, at 11, 197.

42. *See id.*, at 11–12. Moreover, some states include non-profit or not-for-profit activities within the definition of trade and commerce. *E.g.*, FLA. STAT. § 501.203(8) (2013).

43. *See* CARTER & SHELDON, *supra* note 25, at 11.

44. *See id.* at 118–20.

45. CARTER, *supra* note 32, at 14–15.

46. CARTER & SHELDON, *supra* note 25, at 118; *see also* FLA. STAT. § 501.212; N.Y. GEN. BUS. LAW § 349 (McKinney 2013); W. VA. CODE § 46A-6-104 (2013).

47. Hawaii, Massachusetts, and California have permitted suits against the government. *See* *Notrica v. State Comp. Ins. Fund*, 83 Cal. Rptr. 2d 89, 111 (Ct. App. 1999); *Daly v. Harris*, 215 F. Supp. 2d 1098, 1123–25 (D. Haw. 2002); *Pierce v. Dew*, 626 F. Supp. 386, 388 (D. Mass. 1986). Illinois, Montana, Texas, Washington, Connecticut, and North Carolina have excluded government entities from liability under each state's respective UDAP statute. *See* *City of Danbury v. Dana Inv. Corp.*, 730 A.2d 1128, 1140 (Conn. 1999)

v. Du Page Airport Authority,⁴⁸ the Illinois court considered the applicability of its UDAP statute to municipal corporations, and found that such corporations could not be sued under that statute.⁴⁹ The court reasoned that municipal corporations do not fall under the definition of *person* as required by the UDAP statute.⁵⁰ Since the statute specifically mentioned both domestic and foreign corporations as possible defendants, the court concluded that the failure of the statute to specifically mention municipal corporations indicated that the legislature intended to exempt municipal corporations from an unfair or deceptive trade practice lawsuit.⁵¹

Similarly, in *Montana Vending, Inc. v. Coca-Cola Bottling Co. of Montana*,⁵² the Montana court found that the state's UDAP statute could not be enforced against a government defendant, since the plain meaning of *person* could not be construed to include a government entity.⁵³ The court went on to note that the government entity in the case—a school district—was not engaged in a business activity at the time and therefore, could not be sued under the state's UDAP statute.⁵⁴ This analysis suggests that had the school district or other government agency been engaged in trade or commerce—as defined by the Montana UDAP statute and the Montana courts—a UDAP cause of action would be cognizable.⁵⁵

Texas also exempts the government agencies from liability under the state's UDAP statute.⁵⁶ According to Texas law, “[g]overnmental immunity

(concluding that municipalities fall under the exemption for “actions . . . permitted under law as administered by any regulatory board or officer acting under statutory authority of the state”); *Du Page Aviation Corp. v. Du Page Airport Auth.*, 594 N.E.2d 1334, 1341 (Ill. App. Ct. 1992); *Montana Vending, Inc. v. Coca-Cola Bottling Co. of Mont.*, 78 P.3d 499, 505–06 (Mont. 2003); *State v. Furio*, 148 S.E.2d 275, 277 (N.C. 1966); *Rea Constr. Co. v. City of Charlotte*, 465 S.E.2d 342, 343 (N.C. Ct. App. 1996) (citing *Sperry Corp. v. Patterson*, 325 S.E.2d 642, 644 (N.C. Ct. App. 1985)) (finding that neither a state, city, town, nor agency of the state may be sued under North Carolina's UDAP statute); *Jefferson Cnty. v. Bernard*, 148 S.W.3d 698, 702 (Tex. App. 2004); *Washington Natural Gas Co. v. Public Util. Dist. No. 1 of Snohomish Cnty.*, 459 P.2d 633, 636 (Wash. 1969) (finding that the legislature's failure to include municipal corporations under the section listing entities subject to the statute renders municipalities exempt from suit).

48. 594 N.E.2d 1334 (Ill. App. Ct. 1992).

49. *Id.* at 1341.

50. *Id.*

51. *Id.*

52. 78 P.3d 499 (Mont. 2003).

53. *Id.* at 505–06.

54. *Id.*

55. *See id.*

56. TEX. GOV'T CODE ANN. § 311.034 (West 2013); *Jefferson Cnty. v. Bernard*, 148 S.W.3d 698, 700 (Tex. App. 2004).

protects governmental units of the [s]tate from” UDAP lawsuits.⁵⁷ Therefore, UDAP claims against the government or its agencies will be permitted only if there is a clear and unambiguous waiver of immunity.⁵⁸ In *Jefferson County v. Bernard*,⁵⁹ the Texas court was faced with determining whether the inclusion of the term *governmental entities* in the UDAP statute’s definition of persons covered in the statute constituted a waiver of sovereign immunity.⁶⁰ The court reasoned that the waiver of sovereign immunity must be clear and “[a]ny ambiguities in a statute are to be resolved in favor of retaining immunity.”⁶¹ Therefore, the court held that the inclusion of the phrase *governmental entities* was insufficient to indicate a waiver of governmental immunity.⁶² However, it is important to note that the Texas UDAP statute is one of the weakest in the country,⁶³ and unlike the majority of states, Texas chooses to interpret its UDAP statute narrowly.⁶⁴ Consequently, it is unlikely that other states faced with this issue would come to the same conclusion.⁶⁵

The purpose of UDAP statutes is to provide extensive protection from the broadest range of unfair and deceptive practices.⁶⁶ The holding, set forth in the Texas case, seems to contradict this purpose by exempting governmental entities from the scope of the statutes.⁶⁷ By narrowly interpreting terms such as *person* or *governmental entities*, these states are allowing injured consumers to go without a remedy.⁶⁸ In order to advance the true purpose of UDAP statutes, courts should interpret each aspect of the statute as liberally as possible in order to ensure coverage to the most consumers.⁶⁹ Despite the results in Texas and other states, some other states

57. *Bernard*, 148 S.W.3d at 700.

58. *Id.*

59. 148 S.W.3d 698 (Tex. Ct. App. 2004).

60. *Id.* at 701.

61. *Id.* (citing *Wichita Falls State Hosp. v. Taylor*, 106 S.W.3d 692, 697 (Tex. 2003)).

62. *Id.*

63. See CARTER, *supra* note 32, at 11.

64. See *id.*

65. *Mack v. Bristol-Myers Squibb Co.*, 673 So. 2d 100, 109 (Fla. 1st Dist. Ct. App. 1996) (distinguishing the narrow Texas UDAP statute from the broad UDAP statute of Florida).

66. See *FTC v. Sperry & Hutchinson Co.*, 405 U.S. 233, 239–40 (1972).

67. See *Bernard*, 148 S.W.3d at 702.

68. See *id.* at 701–02.

69. See *Sperry & Hutchinson Co.*, 405 U.S. at 239–40.

have reached the opposite result and permit consumers to bring UDAP claims against governmental entities.⁷⁰

UDAP statutes have been applied against government agencies in a few states.⁷¹ However, the majority of states have not yet had occasion to decide this issue.⁷² Unless there is a specific statutory exemption regarding lawsuits against the government, there appears to be no absolute obstacle in applying UDAP statutes to government agencies engaging in deceptive practices.⁷³

Further, if the government engages in an unfair or deceptive trade practice in which consumers suffer a loss, such consumers should have a method of recovery under the UDAP statutes.⁷⁴ Permitting such lawsuits would advance the exact purpose of UDAP statutes; namely, to protect the public from unfair and deceptive practices.⁷⁵

Both Hawaii and Massachusetts permit state agencies to be sued under their respective UDAP statutes.⁷⁶ Several entities are exempt under the Hawaii UDAP statute; however, the statute is silent as to municipalities.⁷⁷ In *Daly v. Harris*,⁷⁸ the Hawaii court concluded that this silence indicated that

70. *Daly v. Harris*, 215 F. Supp. 2d 1098, 1122–23 (D. Haw. 2002); *Pierce v. Dew*, 626 F. Supp. 386, 387–88 (D. Mass. 1986).

71. *Daly*, 215 F. Supp. 2d at 1122–23; *Pierce*, 626 F. Supp. at 387–88.

72. *See Daly*, 215 F. Supp. 2d at 1123; *Pierce*, 626 F. Supp. at 387.

73. *See CARTER & SHELDON*, *supra* note 25, at 118. Other articles have addressed how statutes have been extended to cover other entities not explicitly noted in the statutory provisions. *See also* Michael Flynn, *Physician Business (Mal)practice*, 20 *HAMLIN L. REV.* 333, 345–46 (1996) (finding that the “scarcity of . . . statutory provisions and case law”—regarding UDAP statutes’ application to learned professionals—support the notion that the statutes could extend to learned professionals); Michael Flynn & Karen Slater, *All We Are Saying is Give Business a Chance: The Application of State UDAP Statutes to Business-to-Business Transactions*, 15 *LOY. CONSUMER L. REV.* 81, 87–89 (2003) (discussing which states permit a business to sue another business).

74. *CARTER & SHELDON*, *supra* note 25, at 10–11.

75. *Id.*

76. *Daly*, 215 F. Supp. 2d at 1123; *see also Pierce*, 626 F. Supp. at 387–88. California has also permitted suits against state agencies in violation of the state UDAP statute, though inconsistently. *Compare* *Trinkle v. Cal. State Lottery*, 84 Cal. Rptr. 2d 496, 499–500 (Ct. App. 1999) (concluding that “[o]nly through an unreasonable, strained construction” can the government entity fall under the term person; thus, the cause of action failed), *and* *Janis v. Cal. State Lottery Comm’n*, 80 Cal. Rptr. 2d 549, 553 (Ct. App. 1998) (finding a government entity is not a person subject to suit; thus, the cause of action failed as a matter of law), *with* *Notrica v. State Comp. Ins. Fund*, 83 Cal. Rptr. 2d 89, 94 (Ct. App. 1999) (permitting suit against a government entity, but relying on specific language that authorized the fund in question).

77. *See Daly*, 215 F. Supp. 2d at 1122–23.

78. 215 F. Supp. 2d 1098 (D. Haw. 2002).

the statute did indeed permit UDAP lawsuits against the government.⁷⁹ According to Hawaiian “legislative history and judicial interpretation,” a strong movement in the direction of increased consumer protection has developed.⁸⁰ The court noted that the legislature consequently utilized “‘broad’ and ‘sweeping terms’” in the UDAP statute to provide protection to as many consumers as possible.⁸¹ Therefore, when in doubt, the language of the statute should be interpreted liberally.⁸² The court further determined that the sole limitation set forth in the UDAP statute is the requirement that “acts or practices be done ‘in the conduct of any trade or commerce.’”⁸³ Taking into account such considerations, the court held that so long as the government agency in question is engaged in trade or commerce, such agency may be sued under Hawaii’s UDAP statute.⁸⁴

In making this ruling, the Hawaii court looked to the Massachusetts courts, which were also faced with the same issue.⁸⁵ In *Pierce v. Dew*,⁸⁶ the Massachusetts court had to determine whether a governmental entity may be held liable under the state UDAP statute.⁸⁷ The Massachusetts UDAP statute allows for suits against “‘natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entity.’”⁸⁸ As similarly mentioned by the *Daly* court above, the Massachusetts UDAP statute is intended to be a “‘statute of broad impact.’”⁸⁹ Therefore, when in doubt, it is in the court’s best interest to interpret the UDAP statute in the most liberal manner.⁹⁰ Consequently, since there was no legislative evidence that indicated otherwise, the court found the phrase “‘any other legal entity’” to include governmental agencies.⁹¹

79. *Id.* at 1123–25.

80. *Id.* at 1122.

81. *Id.* (quoting *Han v. Yang*, 931 P.2d 604, 619 (Haw. Ct. App. 1997)).

82. *Id.* at 1124 (quoting *Cieri v. Leticia Query Realty, Inc.*, 905 P.2d 29, 43 (Haw. 1995)).

83. *Daly*, 215 F. Supp. 2d at 1122 (quoting *Cieri*, 905 P.2d at 37).

84. *Id.* at 1122–23 (quoting *United States Leasing Corp. v. City of Chicopee*, 521 N.E.2d 741, 744 (Mass. 1988)).

85. *Id.* at 1123 (citing *Cieri*, 905 P.2d at 37–38).

86. 626 F. Supp. 386 (D. Mass. 1986).

87. *Id.* at 387.

88. *Id.* (quoting MASS. GEN. LAWS ch. 93A, § 1(a) (2013)).

89. *Id.* at 388 (quoting *Slaney v. Westwood Auto, Inc.*, 322 N.E.2d 768, 772 (Mass. 1975)); see also *Daly*, 215 F. Supp. 2d at 1122 (citing *Han v. Yang*, 931 P.2d 604, 619 (Haw. Ct. App. 1997)).

90. *Daly*, 215 F. Supp. 2d at 1124 (quoting *Cieri*, 905 P.2d at 43).

91. *Pierce*, 626 F. Supp. at 387–88 (citing *Keane, Inc. v. Boston Water & Sewer Comm’n*, No. 50133 (Suffolk Superior Court, Dec. 16, 1981)).

In *United States Leasing Corp. v. City of Chicopee*,⁹² the Massachusetts court further developed its stance regarding whether a governmental entity may be a proper defendant in a UDAP lawsuit.⁹³ The court recognized that the legislature had maintained its silence on this issue; thus, the court found it necessary to focus its analysis on whether the potential government defendant engaged in trade or commerce.⁹⁴ Though the defendant in the case had not been participating in any business-like endeavors, the analysis set forth by the court suggests that had the defendant engaged in such activities, the UDAP statute would have applied and been violated.⁹⁵

Both the Hawaii and Massachusetts courts promote a broad interpretation of each state's UDAP statute's text.⁹⁶ Though most courts have yet to face the issue of whether a government entity may be a proper defendant under state UDAP statutes,⁹⁷ Hawaii and Massachusetts indicate that such lawsuits may well fit within the reach of UDAP statutes.⁹⁸ Since the majority of state UDAP statutes are both expansive in scope and contain broad prohibitions against unfair and deceptive acts, state courts should be able to permit lawsuits against the government and its entities when such parties are engaging in unfair and deceptive acts or practices.⁹⁹

IV. APPLICATION OF STATE UNFAIR AND DECEPTIVE TRADE PRACTICE STATUTES BROUGHT ON BEHALF OF A DEPENDENT CHILD

There has yet to be a case in this country in which a dependent child has maintained a cause of action for an unfair or deceptive trade practice against a state agency, when such agency misrepresented to the child its role in a dependency proceeding.¹⁰⁰ Yet, UDAP statutes seem to be broad

92. 521 N.E.2d 741 (Mass. 1988).

93. *Id.* at 744.

94. *Id.*; *Genesco Entm't, Inc. v. Koch*, 593 F. Supp. 743, 750–51 (S.D.N.Y. 1984) (finding courts must focus on whether the practice in question arose out of trade or commerce).

95. *United States Leasing Corp. v. City of Chicopee*, 521 N.E.2d 741, 744 (Mass. 1988); *see also* *Bedrosian, L.L.C. v. Costanza*, 10 Mass. L. Rptr. 459, 459–60 (Super. Ct. 1999) (concluding that municipality may be subject to suit so long as the municipality engaged in trade or commerce).

96. *Daly v. Harris*, 215 F. Supp. 2d 1098, 1122 (D. Haw. 2002) (quoting *Han v. Yang*, 931 P.2d 604, 619 (Haw. Ct. App. 1997)); *Pierce*, 626 F. Supp. at 388 (quoting *Slaney v. Westwood Auto, Inc.*, 322 N.E.2d 768, 772 (Mass. 1975)).

97. *See, e.g., Pierce*, 626 F. Supp. at 387–88.

98. *Daly*, 215 F. Supp. 2d at 1122; *Pierce*, 626 F. Supp. at 387–88.

99. *See* CARTER, *supra* note 32, app. at 24–29.

100. *See id.*

enough to enable a dependent child to initiate such a claim when the state agency deceives or treats a dependent child unfairly.¹⁰¹ The key to such a claim is to examine the nature of the dependent child's claim and determine if such a claim fits within the UDAP statute prohibitions.¹⁰²

Florida provides an example of how the courts could permit a UDAP claim against government agencies on behalf of dependent children.¹⁰³ The Florida UDAP statute, which is typical of most state UDAP statutes, prohibits “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.”¹⁰⁴ Florida specifically requires that the provisions of the statute *be construed liberally* in order to promote the policies set forth in the statute, which includes protecting the consuming public.¹⁰⁵ Therefore, the Florida UDAP statute is a broadly written statute.¹⁰⁶

In order to determine whether a cause of action could indeed be brought against a state agency for misrepresenting its role in a dependency proceeding, the facts set forth in the opening anecdote involving Billy's dependency proceeding will be analyzed. First, the Florida UDAP statute defines a consumer as “an individual; child, by and through [the child's] parent or legal guardian; business; firm; . . . corporation; any commercial entity, however denominated; or any other group or combination.”¹⁰⁷ Billy is a child and, therefore, fits within the definition of a consumer.¹⁰⁸

Next, the Florida UDAP statute requires that unfair or deceptive practices arise in trade or commerce.¹⁰⁹ The phrase *trade or commerce* is

101. See *id.* at 24–29.

102. See FLA. STAT. §§ 501.203(7), .204 (2013); CARTER, *supra* note 32, app. at 7–10.

103. See FLA. STAT. § 501.204.

104. *Id.* § 501.204(1).

105. *Id.* § 501.202.

106. *Hanson Hams, Inc. v. HBH Franchise Co.*, No. 03-61198-CIV, 2003 WL 22768687, at *2 (S.D. Fla. Nov. 7, 2003) (citing *Day v. Le-Jo Enters., Inc.*, 521 So. 2d 175, 178 (Fla. 3d Dist. Ct. App. 1988)) (finding courts have regarded the Florida UDAP statute as *extremely broad*); see also, e.g., *Mack v. Bristol-Myers Squibb Co.*, 673 So. 2d 100, 103 (Fla. 1st Dist. Ct. App. 1996).

107. FLA. STAT. § 501.203(7). At least thirty-four states would grant a private right of action to a *person* or a *consumer* like Billy. See *id.*; see also ALA. CODE §§ 8-19-3(2), (5), -10(a) (2013); LA. REV. STAT. ANN. §§ 51:1402(1), (8), :1409(A) (2013); MISS. CODE ANN. §§ 75-24-3(a), -15(1) (2013); N.H. REV. STAT. ANN. §§ 358-A:1(I), :10(I) (2013); 73 PA. CONS. STAT. ANN. §§ 201-2(2), -9.2(a) (West 2013).

108. See FLA. STAT. § 501.203(7) and see *supra* hypothetical Part I.

109. FLA. STAT. § 501.204(1). Many states require that the unfair or deceptive trade practice arise from trade or commerce. ALA. CODE § 8-19-5; ALASKA STAT. § 45.50.471(a) (2013); CONN. GEN. STAT. § 42-110b(a) (2013); FLA. STAT. § 501.204(1); HAW. REV. STAT. § 480-2(a) (2013); IDAHO CODE ANN. § 48-601 (2013); 815 ILL. COMP. STAT.

defined as “the advertising, soliciting, providing, offering, or distributing, whether by sale, rental, or otherwise, of any good or service, . . . whether tangible or intangible, . . . wherever situated.”¹¹⁰ This is an expansive definition of trade or commerce and seems to cover more than what would conventionally be considered business activities.¹¹¹ The actions of both the child protective services caseworkers and the GAL representatives fit this definition.¹¹² By providing Billy with a business card, the child protective services caseworker engaged in a form of advertisement.¹¹³ The business card is tangible evidence of *trade or commerce*.¹¹⁴ Further, the representation that the child protective services government agency is the law firm for Florida’s children is tangible evidence that a service is being offered to Billy.¹¹⁵ In addition, the GAL Program representative declared to Billy that the GAL Program represented him in the dependency proceeding.¹¹⁶ This kind of statement also fits within the definition of *trade or commerce* because the GAL Program is providing legal services.¹¹⁷

The Florida UDAP statute requires that “due consideration and great weight shall be given to the interpretations of the [FTC] and the federal courts.”¹¹⁸ Therefore, the FTC and the federal court definitions of unfair and deceptive trade practices apply to the *Florida Statutes*.¹¹⁹ Under FTC and federal court precedent, an act or practice is a deceptive trade practice if the act or practice is likely to, or “has the tendency [or] capacity to . . . deceive” consumers acting reasonably under the circumstances.¹²⁰ Further, proof of

505/2 (2013); KY. REV. STAT. ANN. § 367.170(1) (West 2013); LA. REV. STAT. ANN. § 51:1405(A); MASS. GEN. LAWS ch. 93A, § 2(a) (2013); MICH. COMP. LAWS § 445.903(1) (2013); MISS. CODE ANN. § 75-24-5(1); MONT. CODE ANN. § 30-14-103 (2013); NEB. REV. STAT. § 59-1602 (2013); N.H. REV. STAT. ANN. § 358-A:2; N.M. STAT. ANN. § 57-12-3 (2013); N.Y. GEN. BUS. LAW § 349(a) (McKinney 2013); 73 PA. CONS. STAT. ANN. § 201-3; R.I. GEN. LAWS § 6-13.1-2 (2012); S.C. CODE ANN. § 39-5-20(b) (2012); TENN. CODE ANN. § 47-18-104(a) (2013); TEX. BUS. & COM. CODE ANN. § 17.46(a) (West 2013); UTAH CODE ANN. § 13-5-2.5(1) (LexisNexis 2013); VT. STAT. ANN. tit. 9, § 2453(a) (2013); W. VA. CODE § 46A-6-104 (2013).

110. FLA. STAT. § 501.203(8).

111. *Id.*

112. *See id.* and see hypothetical *supra* Part I.

113. *See Florida Bar v. Matus*, 528 So. 2d 895, 895 (Fla. 1988) and see hypothetical *supra* Part I.

114. FLA. STAT. § 501.203(8); *Matus*, 528 So. 2d at 895.

115. FLA. STAT. § 501.203(8) and see hypothetical *supra* Part I.

116. *See hypothetical supra* Part I.

117. FLA. STAT. § 501.203(8).

118. *Id.* § 501.204(2).

119. *See id.*

120. *In re Cliffdale Assocs.*, 103 F.T.C. 110, 153 (1984) (citing *Chrysler Corp. v. FTC*, 561 F.2d 357, 363 (D.C. Cir. 1977)).

intent, negligence, fraud, or actual deception is not required to establish such a prohibited practice.¹²¹ The FTC and federal court definitions are intended to be flexible and do not require a specific rule to be violated in order for deception to be found.¹²² The FTC has determined that oral misrepresentations and failures to disclose material facts both violate the FTC Act.¹²³ Therefore, any oral misrepresentation or failure by a party to disclose a material fact will be deemed sufficiently deceptive under the Florida UDAP statute.¹²⁴ Further, federal courts have held that if a practice “offends established public policy, . . . is immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers,” such practice is unfair.¹²⁵ Again, proof of intent, negligence, fraud, or actual deception is not required for an act to be deemed unfair.¹²⁶

Viewed from the perspective of Billy, he reasonably believed that both the state child protective services caseworker and the GAL Program were his legal representatives and would advocate on his behalf.¹²⁷ When the child protective services caseworker handed Billy a business card stating that his agency was the law firm for Florida children, a reasonably prudent person—even if not a child like Billy—would have every reason to believe that the caseworker would indeed be his legal representative in court.¹²⁸ The caseworker failed to mention that he is in fact the petitioner who brings the dependency petition on behalf of the state.¹²⁹ By failing to properly disclose the child protective services worker’s true role in the dependency proceeding, the caseworker failed to disclose material facts that may have impacted Billy’s decision to even think about obtaining his own lawyer.¹³⁰

121. Orkin Exterminating Co. v. FTC, 849 F.2d 1354, 1368 (11th Cir. 1988); Grove v. Huffman, 634 N.E.2d 1184, 1187–88 (Ill. App. Ct. 1994); Brandon v. Winnett, No. 01A01-9411-CH00529, 1995 WL 444385, at *6 (Tenn. Ct. App. July 28, 1995).

122. Urling v. Helms Exterminators, Inc., 468 So. 2d 451, 453 (Fla. 1st Dist. Ct. App. 1985) (per curiam) (citing Rollins, Inc. v. Heller, 454 So. 2d 580, 584 (Fla. 3d Dist. Ct. App. 1984)).

123. *In re Peacock Buick, Inc.*, 86 F.T.C. 1532, 1556 (1975).

124. See FLA. STAT. § 501.204(2) (2013).

125. Spiegel, Inc. v. FTC, 540 F.2d 287, 293 (7th Cir. 1976) (citing FTC v. Sperry & Hutchinson, Co., 405 U.S. 233, 244 n.5 (1972)).

126. See *Orkin Exterminating Co.*, 849 F.2d at 1368.

127. See hypothetical *supra* Part I.

128. See *id.*; see also Dep’t of Legal Affairs v. Father & Son Moving & Storage, Inc., 643 So. 2d 22, 26 (Fla. 4th Dist. Ct. App. 1994) (citing Chrysler Corp. v. FTC, 561 F.2d 357, 363 (D.C. Cir. 1977)) (stating that “an advertisement is considered deceptive if it has the capacity to convey misleading impressions to consumers”).

129. FLA. STAT. § 39.501(1) and see hypothetical *supra* Part I.

130. See FLA. STAT. § 501.204(1); *In re Peacock Buick, Inc.*, 86 F.T.C. 1532, 1556 (1975) and see hypothetical *supra* Part I.

The caseworker misled Billy, who acted reasonably under the circumstances.¹³¹ Such deceptive actions by the caseworker are prohibited under the Florida UDAP statute.¹³²

Further, when the GAL Program representative visited Billy, the representative explained that the GAL Program served as Billy's representative in court and would advocate on his behalf.¹³³ Billy consistently maintained that he wanted to return to his home and be with his mother, brother, and stepfather.¹³⁴ Instead, the GAL Program advocated for Billy's separation from his mother, brother, and stepfather, and recommended Billy's removal from his home during the actual proceeding.¹³⁵ Again, a reasonably prudent person in Billy's position would have had every reason to believe that the GAL Program would advocate for what Billy wanted.¹³⁶ By relying on the oral misrepresentations made by the GAL Program representative, Billy acted reasonably when he did not hire a lawyer.¹³⁷ Such deceptive actions by the GAL Program are prohibited under the Florida UDAP statute.¹³⁸

Moreover, both the caseworker and the GAL Program representative engaged in unfair practices by misrepresenting their respective roles to Billy.¹³⁹ Billy is a child faced with a very difficult and emotionally demanding situation—Billy is at least scared, worried, confused, and vulnerable.¹⁴⁰ Both the caseworker and the GAL Program representative have an ethical, if not moral, responsibility to properly advise Billy, and the failure to do so breaches their duties as public officials to carry out the legislative policy to protect dependent children.¹⁴¹ Instead, both parties treated Billy unfairly by denying him legal representation when Billy

131. See hypothetical *supra* Part I.

132. FLA. STAT. § 501.204(1) and see hypothetical *supra* Part I.

133. See hypothetical *supra* Part I.

134. See *id.*

135. See *id.*

136. See *Dep't of Legal Affairs v. Father & Son Moving & Storage, Inc.*, 643 So. 2d 22, 26 (Fla. 4th Dist. Ct. App. 1994) (citing *Chrysler Corp. v. FTC*, 561 F.2d 357, 363 (D.C. Cir. 1977)) and see hypothetical *supra* Part I.

137. See hypothetical *supra* Part I.

138. FLA. STAT. § 501.204(1) (2013).

139. See *id.*

140. See hypothetical *supra* Part I.

141. See *Spiegel, Inc. v. FTC*, 540 F.2d 287, 293 (7th Cir. 1976) (citing *FTC v. Sperry & Hutchinson Co.*, 405 U.S. 233, 244–45 n.5 (1972)) (reasoning that under the Florida UDAP statute, immoral acts are unfair practices); *Urling v. Helms Exterminators, Inc.*, 468 So. 2d 451, 453 (Fla. 1st Dist. Ct. App. 1985) (*per curiam*) (quoting *Spiegel, Inc.*, 540 F.2d at 293).

reasonably believed he was covered.¹⁴² Billy had no way to know that he could even ask for a lawyer, much less that he needed a lawyer, and that the GAL Program was prohibited from acting as his lawyer in the dependency proceeding; the GAL Program's actions would fit as an unfair trade practice under the Florida UDAP statute.¹⁴³

Next, Billy must contend with the exemptions section of the Florida UDAP statute.¹⁴⁴ The Florida UDAP statute does not specifically mention that the government or government agencies are exempt from lawsuits claiming deceptive or unfair trade practices.¹⁴⁵ However, no Florida court has determined if this absence from the exemptions section of the UDAP statute permits unfair and deceptive trade practice claims against a government agency, like the child protective services state agency or the GAL Program.¹⁴⁶ Yet, the Florida courts have determined this same issue with reference to professionals.¹⁴⁷ In *Kelly v. Palmer, Reifler, & Associates, P.A.*,¹⁴⁸ a Florida district court was asked to determine whether an attorney may be sued under Florida's UDAP statute.¹⁴⁹ Like government agencies, neither attorneys specifically, nor learned professionals in general, are mentioned under the exemptions section of the statute.¹⁵⁰ The court reasoned that the legislature's unambiguous failure to mention attorneys in the statute exemptions indicates that attorneys are not exempt from a UDAP claim.¹⁵¹ The court noted that neither a Florida District Court of Appeal nor the Supreme Court of Florida has decided otherwise.¹⁵² Therefore, since the legislature similarly made no mention of government agencies under the exemptions section of the statute, such agencies are not exempted from suit.¹⁵³ Therefore, Billy's claim against both the child protective services government agency and the GAL Program is not exempt from enforcement under the Florida UDAP statute.¹⁵⁴

142. FLA. STAT. § 39.4085(20) and see hypothetical *supra* Part I.

143. See FLA. STAT. § 501.204(1); *Urling*, 468 So. 2d at 453 (quoting *Spiegel, Inc.*, 540 F.2d at 293 (noting that if an act results in a substantial injury, such act is unfair)); *Dale & Reidenberg*, *supra* note 7, at 334.

144. FLA. STAT. § 501.212.

145. See *id.*

146. *Kelly v. Palmer, Reifler, & Assocs., P.A.*, 681 F. Supp. 2d 1356, 1371 (S.D. Fla. 2010); see also FLA. STAT. § 501.212.

147. *Kelly*, 681 F. Supp. 2d at 1371.

148. 681 F. Supp. 2d 1356 (S.D. Fla. 2010).

149. *Id.* at 1371.

150. FLA. STAT. § 501.212.

151. *Kelly*, 681 F. Supp. 2d at 1371.

152. *Id.*

153. See FLA. STAT. § 501.212; *Kelly*, 681 F. Supp. 2d at 1371.

154. FLA. STAT. § 501.212; *Kelly*, 681 F. Supp. 2d at 1371.

In sum, there appears to be no impediment to Billy—as a dependent child—bringing a lawsuit against the child protective services government agency or the GAL Program for unfair and deceptive trade practices.

V. EFFECT OF APPLYING STATE UNFAIR AND DECEPTIVE TRADE PRACTICE STATUTES TO ENSURE PROTECTION OF DEPENDENT CHILDREN

Perhaps the use of a UDAP statute as a remedy for a dependent child's denial of legal representation seems a bit strange and stretched. However, such use of a UDAP statute seems no more strange or stretched than the failure to provide dependent children with a lawyer in a dependency proceeding. After all, the purpose of the dependency proceeding is to provide government protection to children who have been abused, neglected, or abandoned.¹⁵⁵ Denying such dependent children their own legal representation subjects these children to abuse, neglect, and abandonment within the dependency process.¹⁵⁶ The lack of legal representation for dependent children—when cloaked with deception and unfairness—cries out for a legal remedy.¹⁵⁷ State UDAP statutes provide just such a remedy.¹⁵⁸ Most state UDAP statutes—just like Florida's—provide as remedies for an unfair or deceptive trade practice injunctive relief, economic damages, and the prospect of prevailing party attorney's fees and costs.¹⁵⁹ In Billy's case, an injunction mandating that the child protective services state agency and the GAL Program refrain from misrepresenting their function and not advising Billy that he needs to at least consider, if not obtain, his own lawyer to represent him in a dependency proceeding, would ensure that these government agencies refrain from deceptive and unfair acts or practices.¹⁶⁰ Although economic damages might be difficult to prove, the prospect of recovering attorney's fees and costs would encourage lawyers to take on the representation of Billy in a state UDAP claim.¹⁶¹

155. FLA. STAT. § 39.001(1)(a).

156. See Am. Acad. of Pediatrics, *Developmental Issues for Young Children in Foster Care*, 106 PEDIATRICS 1145, 1148 (2000); CHILDREN'S ADVOCACY INST. ET AL., *supra* note 8 at 15–17; Dale & Reidenberg, *supra* note 7, at 352; Joseph J. Doyle, Jr., *Child Protection and Child Outcomes: Measuring the Effects of Foster Care*, 97 AM. ECON. REV. 1583, 1589 (2007).

157. See CHILDREN'S ADVOCACY INST. ET AL., *supra* note 8, at 15–17.

158. CARTER & SHELDON, *supra* note 25, at 1.

159. *Id.* at 2.

160. See FLA. STAT. § 501.207(b); CARTER & SHELDON, *supra* note 25, at 1–2.

161. See CARTER & SHELDON, *supra* note 25, at 2, 721.

VI. CONCLUSION

By allowing state UDAP claims against government entities, courts would accomplish two goals. First, such a determination would place the government on the same legal footing as any other illegitimate business that uses unfair or deceptive trade practices to gain an advantage.¹⁶² Second, in the context of dependent children, such a determination would prevent the government from further abusing abused, neglected, and abandoned children.¹⁶³ Both of these goals fit well within the purpose of the state UDAP statutes and the child protection statutes.¹⁶⁴ Absent legislation requiring that every dependent child receive legal representation in a dependency proceeding, the least the courts can do is prohibit government entities from tricking an abused, neglected, or abandoned child, and treat these vulnerable children to a legal process that is not riddled with unfairness and deception.

162. *See supra* Part III.

163. *See supra* Parts IV–V.

164. *See* FLA. STAT. §§ 39.001(1)(a), 501.204(1); *supra* Part III.