

[Date]

The Hon. [Member's name]
State Capitol, Room
Sacramento, CA 95814

RE: AB 2206 (Hill) – Support

Dear [Member's name]:

[The name of your organization] requests your support of AB 2206.

This bill is meant modestly to clarify the law in light of the recent case of *Brandon S. v. The State of California ex rel Foster Family Home and Small Family Home Insurance Fund*. In that case a foster child sued his foster parent claiming her negligent supervision of another child in the home allowed that other child repeatedly to sexually molest him.

The case adjudicated whether coverage was available for such a claim under the Foster Family Home and Small Family Home Insurance Fund. The Fund was created during the insurance crisis of the 1980s, when some insurance companies were refusing to provide coverage to foster parents. Because foster parenting is the most common source of adoption for foster children – and, hence, their exit from foster care into the enduring care of a family instead of a program – it is important for both state budgetary and humanitarian reasons to promote such placements. For this reason, creation of the Fund was and is an essential element of state policy toward its abused and neglected children.

Keeping intact those incentives for foster parenting that do exist is even more important given the recent, dramatic downturn of foster parenting in favor of other, far more expensive placements. As documented by the County Welfare Directors Association (<http://www.cwda.org/downloads/FamCarePolicyRep.pdf>), before the recent economic downturn, foster parenting was in free fall. There had been a 30% average reduction statewide as of 2007. That is average. There was a 50% reduction in Sacramento County; 60% in San Bernadino County. This is in significant part because the reimbursements the State pays to foster parents for their cost (they do not get paid for their time) has utterly failed to keep up with the actual costs. As documented in the study, the average monthly reimbursement is currently less than the average monthly cost of kenneling a dog.

The court held, however, that coverage was not available for the foster parent. Current law creating the Fund exempts from coverage payment for any intentionally harmful acts. This exception is transparently supposed to apply only to the foster parent – as a matter of near-uniform policy, we do not promote intentionally bad behavior by insuring it and the Fund insures only foster parents. Moreover, the whole statute is aimed at excepting certain acts of the foster parent from coverage.

Even so, all of the rest of the analogous subdivisions in the exemptions statute (Health & Safety Code section 1527.3) specify that coverage is denied to “a foster parent.” The exception for intentionally bad acts does not. So, on this basis, the court felt constrained to rule that the Fund

cannot pay for damages to foster children when anyone intentionally harms them, even when the foster parent is negligent.

Your measure simply fixes this drafting error by inserting “of a foster parent” to the insurance exception for intentionally bad acts. Adding these four words will restore the Fund and the statute to its original intent, will promote foster parenting by restoring coverage for their negligent acts, and provide some just and needed compensation to foster children – already abused and neglected -- who are also harmed again and intentionally by third parties due to the negligence of the foster parent.

For these reasons, we ask for your support of AB 2206.

Sincerely,

[Your name]

[The name of your organization]