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## Children's Advocacy Institute



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March 25, 2011

The Honorable Susan Bonilla  
Assemblymember, 11th District  
State Capitol, Room 2188  
Sacramento, CA 95814

RE: AB 863 (Bonilla) – Support and Sponsorship

Dear Assemblymember Bonilla:

The Children's Advocacy Institute, which works to improve the well being of children in California through regulatory, legislative, and judicial advocacy, is pleased to support and sponsor your AB 863, a bill exceedingly modest in scope but important to ensure that abused and neglected children are raised by foster parents – the most frequent source of adoption and an exist from a system the Little Hoover Commission has described as a "heartless limbo."

Prior to 1986, licensed foster parents had difficulty securing homeowner and other types of insurance because insurance company policies excluded them from coverage. At that time, many foster parents were financially responsible for any damages arising out of the foster placement.

Thus, not only did a prospective foster parent have to weigh the enormous responsibility of taking in and raising an abused and neglected child, they also had to decide whether to expose their assets as well.

Likewise, without insurance coverage, there may not be sufficient money available for a foster child to be compensated for their injuries.

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 (foster parenting is the least expensive of all placements, an exit from the system means even greater savings) and humanitarian reasons to promote such placements.

The Legislature recognized that a prospective foster parent's inability to obtain insurance to protect the assets of a foster parent put the personal assets of the foster parents at risk and jeopardized the ability of the foster care system to recruit foster parents, especially those with assets to protect. In 1986, the Legislature created the Foster Family Home and Small Family Home Insurance Fund (Fund) to provide "gap" insurance coverage for licensed foster parents.

The Fund pays liability claims on behalf of foster parents to “foster children, their parents, guardians, or guardians ad litem...resulting from occurrences peculiar to the foster-care relationship and the provision of foster care services,” Health and Safety Code section 1527.2.

Coverage by the Fund is limited to gap coverage only and does not replace coverage normally offered under homeowner’s or tenant’s policies. Coverage is limited to \$300,000 per home, per year, and is intended to cover any valid claim of bodily injury or personal injury.

The other aim of the Fund is to aid in ensuring that foster children are able to be made whole when they are harmed while in a foster parent’s home. Health & Safety Code section 1527.1 provides:

“The purpose of the fund is to pay, on behalf of foster family homes and small family homes, as defined in Section 1502, claims of foster children ... “

Keeping intact incentives for foster parenting 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,<sup>1</sup> 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 Bernardino County. This is 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.

As a matter of sound policy, we do not offer insurance coverage to an insured that will pay for the damages caused by the insured’s intentionally criminal acts. Similar to all such insurance policy exclusions, subsection (a) of Health and Safety Code 1527.3 states that the Fund is not liable for “any loss arising out of a dishonest, fraudulent, criminal, or intentional act.” However this subsection does not refer to the foster parent as with other subsections. For example, subsection (e) states that the fund is not liable for “any allegation of alienation of affection against a foster parent.”

The omission of “foster parent” in subsection (a) has been interpreted by the court system to mean that the fund is not liable for **any** dishonest, fraudulent, criminal or intentional act perpetrated by **anyone** against the foster child.

This new ruling means that a foster parent’s personal property and assets are liable if a situation arises out of their control. For example, if a foster parent hires a babysitter (a third party) and the babysitter intentionally hurts the foster child, the foster parent is ineligible for gap insurance coverage. Their assets are now exposed, contrary to the intent of the law and the intent of everyone when the law was enacted in 1986.

As proven by the text of the first All County Letter to implement the Fund in 1986, offering such protections was always the Legislature’s intent:

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<sup>1</sup> <http://www.cwda.org/downloads/FamCarePolicyRep.pdf>

“An example of a claim that may be submitted to the Fund includes a situation where a foster child is injured and a child’s parent files a claim against the foster parent for negligent supervision.” ...

“In addition, certain acts are not covered, such as losses arising out of a criminal **act on the part of the foster parent** [.]”

(Emphasis supplied)

These excerpts show that the contemporaneous understanding – the original intent, to borrow a phrase – was that that the criminal acts to be excluded were intended to be those ***of the foster parent***.

Your measure simply restores the law to what everyone thought it had been since 1986 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 them, 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.

Thank you for authoring this bill on behalf of California’s approximately 78,000 foster children.

Sincerely,

A handwritten signature in black ink, appearing to read "Ed Howard", written in a cursive style.

Ed Howard  
Senior Counsel,  
Children’s Advocacy Institute