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CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 384

Introduced by Assembly Members Portantino and Galgiani
(Principal coauthors: Assembly Members Garcia and Leno)
(Coauthors: Assembly Members Adams, Arambula, Beall, Benoit,
Berryhill, Caballero, Carter, Cook, Davis, DeSaulnier, DeVore,
Emmerson, Hernandez, Horton, Huffman, Jeffries, Karnette,
Krekorian, Lieu, Ma, Mendoza, Mullin, Nava, Sharon Runner,
Ruskin, Salas, Silva, Smyth, Solorio, Soto, Strickland, Swanson,
Torrico, Walters, and Wolk)
(Coauthors: Senators Alquist, Corbett, Denham, Maldonado,
Negrete McLeod, Wiggins, Wyland, and Yee)

February 15, 2007

An act to amend Section 68120 of the Education Code, and to amend Section 22820 of the Government Code, relating to firefighters, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 384, as amended, Portantino. Firefighters.

(1) Existing law requires the Regents of the University of California, the Board of Directors of the Hastings College of the Law, and the Trustees of the California State University to excuse the mandatory systemwide tuition and fees of any surviving spouse or surviving child,

natural or adopted, of a deceased person who was a resident of the state, who was employed by a public agency, who was a contractor, or who was an employee of a contractor, as defined, whose principal duties consisted of active law enforcement service or active fire suppression and prevention, and who was killed in the performance of those duties.

Under existing law, a surviving stepchild living or domiciled with the deceased person at the time of his or her death, and who was claimed on the tax form most recently filed by the deceased person, or who received 50% or more of his or her support from that deceased person in the tax year immediately preceding his or her death, also qualifies for the waiver of mandatory systemwide tuition and fees.

This provision is applicable to the Regents of the University of California only if the regents, by resolution, make it applicable.

This bill would enact the California Fallen Federal Firefighter Survivor Assistance Act of 2007, which would excuse the mandatory systemwide tuition and fees of any surviving spouse, *as defined*, or surviving child or stepchild of a deceased firefighter employed by the federal government who was a resident of, and whose regular duty assignment was to perform firefighting services in, this state, upon specified circumstances. *The bill would provide that those benefits shall supplement, and not supplant, specified federal benefits, as described, and would make a survivor ineligible for the mandatory tuition and fee waiver if provision of those benefits would result in the reduction or elimination of the above-described federal benefits.*

(2) The Public Employees' Medical and Hospital Care Act provides continuing health benefit coverage to the surviving spouse, as defined, or eligible family member of a firefighter or peace officer who dies as a result of an injury or disease sustained in the line of duty. Contributions paid by those persons and the state are deposited into one of 2 continuously appropriated funds to provide that coverage.

This bill would extend that health benefit coverage to the surviving spouse, as defined, or eligible family member of a firefighter employed by the federal government who was a resident of, and whose regular duty assignment was to perform firefighting services in, this state, and who dies as a result of an injury or disease sustained in the line of duty. By extending that coverage to those survivors, the bill would increase the contributions to continuously appropriated funds, thereby making an appropriation.

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known and may be cited as the
2 California Fallen Federal Firefighter Survivor Assistance Act of
3 2007.

4 SEC. 2. The Legislature finds and declares all of the following:

5 (a) Five of the state's finest and bravest gave their lives in the
6 line of duty last fall battling to protect a home in the midst of the
7 blistering Esperanza Fire near Cabazon in Riverside County.

8 (b) Captain Mark Loutzenhiser and Engine Operators Jess
9 McLean, Jason McKay, Daniel Hoover-Najera, and Pablo Cerda
10 died after their engine was burned over while battling the
11 wind-whipped fire, which grew to more than 24,000 acres in just
12 24 hours.

13 (c) Of the five fallen firefighters, both Captain Loutzenhiser
14 and Engine Operator McLean were career civilian federal
15 firefighters who resided in California, served on Engine 57 at the
16 San Jacinto Ranger Station in Idyllwild, and left behind surviving
17 family members.

18 (d) When a firefighter makes the ultimate sacrifice for the
19 public's safety, his or her family also makes a huge sacrifice in
20 the lost years of love and support. A fallen firefighter's family is
21 also left behind with a multitude of uncertainties that accompany
22 their grief and sorrow.

23 (e) When a firefighter is killed in the line of duty, he or she not
24 only leaves behind a family who must suffer the loss of a loved
25 one, but also a family that may be faced with a severe financial
26 squeeze. This financial loss can take a terrible toll on the surviving
27 family's pocketbook and ultimately makes the cost of providing
28 for postsecondary education and acquiring adequate health
29 insurance virtually impossible.

30 (f) The existing state-funded program to assist uninsured spouses
31 and children of fallen firefighters and police officers in purchasing
32 medical and dental benefits was intended to apply to any surviving
33 uninsured spouse or child of a fallen California firefighter.

34 (g) It is the intent of the Legislature to clarify that Section 22820
35 of the Government Code applies to those survivors of California
36 federal firefighters killed in the line of duty.

37 (h) The existing public postsecondary educational fee waivers
38 extended to a survivor of a fallen firefighter ultimately assist

1 survivors in reestablishing their lives in the face of tremendous
2 sacrifice and loss.

3 (i) Section 68120 of the Education Code was intended to apply
4 to any surviving child or spouse of a California firefighter killed
5 in the line of duty. Since the fee waivers' enactment, colleges and
6 universities have administered Section 68120 in a manner that
7 excludes surviving spouses and children of fallen federal
8 firefighters who were residents of, and provided services within,
9 this state.

10 (j) It is the intent of the Legislature to clarify that Section 68120
11 of the Education Code applies to those survivors of California
12 federal firefighters killed in the line of duty.

13 SEC. 3. Section 68120 of the Education Code is amended to
14 read:

15 68120. (a) Notwithstanding any other provision of law, no
16 mandatory systemwide fees or tuition of any kind shall be required
17 of, or collected by, the Regents of the University of California, the
18 Board of Directors of the Hastings College of the Law, or the
19 Trustees of the California State University from any surviving
20 spouse or surviving child of a deceased person who met all of the
21 following requirements:

22 (1) He or she was a resident of this state.

23 (2) He or she was employed by a public agency, or was a
24 contractor, or an employee of a contractor, performing services
25 for a public agency, or was a firefighter employed by the federal
26 government whose regular duty assignment was to perform
27 firefighting services in this state.

28 (3) His or her principal duties consisted of active law
29 enforcement service or active fire suppression and prevention.
30 This section shall not apply to a person whose principal duties
31 were clerical, even if he or she was subject to occasional call or
32 was occasionally called upon to perform duties within the scope
33 of active law enforcement or active fire suppression and prevention.

34 (4) He or she was killed in the performance of active law
35 enforcement or active fire suppression and prevention duties, or
36 died as a result of an accident or an injury caused by external
37 violence or physical force, incurred in the performance of his or
38 her active law enforcement or active fire suppression and
39 prevention duties.

1 (b) Notwithstanding subdivision (a), a person who qualifies for
2 the waiver of mandatory systemwide fees and tuition under this
3 section as a surviving child of a contractor, or of an employee of
4 a contractor, who performed services for a public agency shall, in
5 addition to the requirements set forth in subdivision (a), meet both
6 of the following requirements:

7 (1) Enrollment as an undergraduate student at a campus of the
8 University of California or the California State University.

9 (2) Documentation that his or her annual income, including the
10 value of any support received from a parent, does not exceed the
11 maximum household income and asset level for an applicant for
12 a Cal Grant B award, as set forth in Section 69432.7.

13 (c) (1) *Pursuant to subdivision (a), any benefits provided to an*
14 *eligible survivor of a deceased federal firefighter, as described in*
15 *paragraph (2) of subdivision (a), shall supplement, and not*
16 *supplant, any benefits provided to that survivor by a federal*
17 *educational assistance program that has been established for the*
18 *purpose of providing benefits to survivors of public safety officers.*

19 (2) *Notwithstanding paragraph (1), a survivor described in*
20 *paragraph (1) shall not be eligible for the mandatory fee and*
21 *tuition waiver provided under this act if the provision of those*
22 *benefits would result in the reduction or elimination of a benefit*
23 *provided by a federal program described in paragraph (1).*

24 ~~(e)~~

25 (d) As used in this section:

26 (1) “Contractor” or “employee of a contractor” does not include
27 a security guard or security officer, as defined in Section 7582.1
28 of the Business and Professions Code.

29 (2) “Public agency” means the state or any city, city and county,
30 county, district, or other local authority or public body of, or within,
31 the state.

32 (3) “Spouse” has the same meaning as defined in Section 22171.

33 ~~(3)~~

34 (4) “Surviving child” means either of the following:

35 (A) A surviving natural or adopted child of the deceased person.

36 (B) A surviving stepchild who meets both of the following
37 requirements:

38 (i) He or she was living or domiciled with the deceased person
39 at the time of his or her death.

1 (ii) He or she was claimed on the tax form most recently filed
2 by the deceased person prior to that person’s death, or he or she
3 received 50 percent or more of his or her support from that
4 deceased person in the tax year immediately preceding the death
5 of the deceased person, or both.

6 SEC. 4. Section 22820 of the Government Code is amended
7 to read:

8 22820. (a) Upon the death, on or after January 1, 2002, of a
9 firefighter employed by a county, city, city and county, district,
10 or other political subdivision of the state, a firefighter employed
11 by the Department of Forestry and Fire Protection, a firefighter
12 employed by the federal government who was a resident of this
13 state and whose regular duty assignment was to perform
14 firefighting services within this state, or a peace officer as defined
15 in Section 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, 830.34,
16 830.35, 830.36, 830.37, 830.38, 830.39, 830.4, 830.5, 830.55, or
17 830.6 of the Penal Code, if the death occurred as a result of injury
18 or disease arising out of and in the course of his or her official
19 duties, the surviving spouse or other eligible family member of
20 the deceased firefighter or peace officer, if uninsured, is deemed
21 to be an annuitant under Section 22760 for purposes of enrollment.
22 All eligible family members of the deceased firefighter or peace
23 officer who are uninsured may enroll in a health benefit plan of
24 the surviving spouse’s choice. However, an unmarried child of the
25 surviving spouse is not eligible to enroll in a health benefit plan
26 under this section if the child was not a family member under
27 Section 22775 and regulations pertinent thereto prior to the
28 firefighter’s or peace officer’s date of death. The employer of the
29 deceased firefighter or peace officer shall notify the board within
30 10 days of the death of the employee if a spouse or family member
31 may be eligible for enrollment in a health benefit plan under this
32 section.

33 (b) Upon notification, the board shall promptly determine
34 eligibility and shall forward to the eligible spouse or family
35 member the materials necessary for enrollment. In the event of a
36 dispute regarding whether a firefighter’s or peace officer’s death
37 occurred as a result of injury or disease arising out of and in the
38 course of his or her official duties as required under subdivision
39 (a), that dispute shall be determined by the Workers’ Compensation
40 Appeals Board, subject to the same procedures and standards

1 applicable to hearings relating to claims for workers' compensation
2 benefits. The jurisdiction of the Workers' Compensation Appeals
3 Board under this section is limited to the sole issue of industrial
4 causation and this section does not authorize the Workers'
5 Compensation Appeals Board to award costs against the system.

6 (c) (1) Notwithstanding any other provision of law, and except
7 as otherwise provided in subdivision (d), the state shall pay the
8 employer contribution required for enrollment under this part for
9 the uninsured surviving spouse of a deceased firefighter or peace
10 officer for life, and the other uninsured eligible family members
11 of a deceased firefighter or peace officer, provided the family
12 member meets the eligibility requirements of Section 22775 and
13 regulations pertinent thereto.

14 (2) The contribution payable by the state for each uninsured
15 surviving spouse and other uninsured eligible family members
16 shall be adjusted annually and be equal to the amount specified in
17 Section 22871.

18 (3) The state's contribution under this section shall commence
19 on the effective date of enrollment of the uninsured surviving
20 spouse or other uninsured eligible family members. The
21 contribution of each surviving spouse and eligible family member
22 shall be the total cost per month of the benefit coverage afforded
23 him or her under the plan less the portion contributed by the state
24 pursuant to this section.

25 (d) The cancellation of coverage by an annuitant, as defined in
26 this section, shall be final without option to reenroll, unless
27 coverage is canceled because of enrollment in an insurance plan
28 from another source.

29 (e) For purposes of this section, "surviving spouse" means a
30 husband or wife who was married to the deceased firefighter or
31 peace officer on the deceased's date of death and either for a
32 continuous period of at least one year prior to the date of death or
33 prior to the date the deceased firefighter or peace officer sustained
34 the injury or disease resulting in death.

35 (f) For purposes of this section, "uninsured" means that the
36 surviving spouse is not enrolled in an employer-sponsored health
37 plan under which the employer contribution covers 100 percent
38 of the cost of health care premiums.

1 (g) The board has no duty to identify, locate, or notify any
2 surviving spouse or eligible family member who may be or may
3 become eligible for benefits under this section.

4 SEC. 5. It is the intent of the Legislature that this act be
5 construed as declaratory of existing law.

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