

AMENDED IN SENATE AUGUST 20, 1998
AMENDED IN ASSEMBLY APRIL 28, 1998
AMENDED IN ASSEMBLY APRIL 13, 1998

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 2173

Introduced by Assembly Member Pacheco

February 19, 1998

An act to *amend Section 1799.107 of the Health and Safety Code, and amend Section 3600.4 of the Labor Code, relating to firefighters.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2173, as amended, Pacheco. Firefighters: workers' compensation.

Under existing law, a person injured in the course of employment is generally entitled to workers' compensation. Under existing law, whenever any firefighter is injured, dies, or is disabled by reason of his or her proceeding to or engaging in a fire suppression or rescue operation, or the protection or preservation of life or property, anywhere in this state, the firefighter is entitled to the same benefits under provisions relating to workers' compensation that he or she would have received had that firefighter been acting under the immediate direction of his or her employer.

This bill would provide that the above provisions also apply to firefighters employed by a private entity.

Under existing law, the provision requiring the provision of benefits to *local public agency* firefighters does not require any benefits *to be provided* if the local public entity prohibits the activity giving rise to the injury, death or disability.

This bill would provide that this provision does not relieve ~~the~~ *a private or local public agency* employer from liability for benefits for any injury, disability, or death of a firefighter when the firefighter is acting pursuant to a specified provision regulating emergency services.

~~Since the bill would impose new duties on local jurisdictions with respect to the payment of workers' compensation, the bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

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

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

- 1 SECTION 1. *Section 1799.107 of the Health and*
- 2 *Safety Code is amended to read:*
- 3 1799.107. (a) The Legislature finds and declares that
- 4 a threat to the public health and safety exists whenever
- 5 there is a need for emergency services and that public
- 6 entities and emergency rescue personnel should be
- 7 encouraged to provide emergency services. To that end,
- 8 a qualified immunity from liability shall be provided for
- 9 public entities and emergency rescue personnel
- 10 providing emergency services.
- 11 (b) Except as provided in Article 1 (commencing with
- 12 Section 17000) of Chapter 1 of Division 9 of the Vehicle



1 Code, neither a public entity nor emergency rescue
2 personnel shall be liable for any injury caused by an action
3 taken by the emergency rescue personnel acting within
4 the scope of their employment to provide emergency
5 services, unless the action taken was performed in bad
6 faith or in a grossly negligent manner.

7 (c) For purposes of this section, it shall be presumed
8 that the action taken when providing emergency services
9 was performed in good faith and without gross
10 negligence. This presumption shall be one affecting the
11 burden of proof.

12 (d) For purposes of this section, “emergency rescue
13 personnel” means any person who is an officer, employee,
14 or member of a fire department or fire protection or
15 firefighting agency of the federal government, the State
16 of California, a city, county, city and county, district, or
17 other public or municipal corporation or political
18 subdivision of this state, *or of a private fire department*,
19 whether ~~such~~ *that* person is a volunteer or partly paid or
20 fully paid, while he or she is actually engaged in providing
21 emergency services as defined by subdivision (e).

22 (e) For purposes of this section, “emergency services”
23 includes, but is not limited to, first aid and medical
24 services, rescue procedures and transportation, or other
25 related activities necessary to insure the health or safety
26 of a person in imminent peril.

27 *SEC. 2.* Section 3600.4 of the Labor Code is amended
28 to read:

29 3600.4. (a) Whenever any firefighter, ~~as defined in~~
30 ~~Section 50925 of the Government Code~~, of a city, county,
31 city and county, district, or other public or municipal
32 corporation or political subdivision, *or any firefighter*
33 *employed by a private entity*, is injured, dies, or is
34 disabled from performing his or her duties as a firefighter
35 by reason of his or her proceeding to or engaging in a fire
36 suppression or rescue operation, or the protection or
37 preservation of life or property, anywhere in this state,
38 including the local jurisdiction in which he or she is
39 employed, but is not at the time acting under the
40 immediate direction of his or her employer, he or she or



1 his or her dependents, as the case may be, shall be
 2 accorded by his or her employer all of the same benefits
 3 of this division which he or she or they would have
 4 received had that firefighter been acting under the
 5 immediate direction of his or her employer. Any injury,
 6 disability, or death incurred under the circumstances
 7 described in this section shall be deemed to have arisen
 8 out of and been sustained in the course of employment for
 9 purposes of workers' compensation and all other benefits.

10 (b) Nothing in this section shall be deemed to:

11 (1) Require the extension of any benefits to a
 12 firefighter who at the time of his or her injury, death, or
 13 disability is acting for compensation from one other than
 14 the city, county, city and county, district, or other public
 15 or municipal corporation or political subdivision, *or*
 16 *private entity*, of his or her primary employment or
 17 enrollment.

18 (2) Require the extension of any benefits to a
 19 firefighter employed by a city, county, city and county,
 20 district, or other public or municipal corporation or
 21 political subdivision, *or private entity*, which by charter,
 22 ordinance, ~~or~~ departmental regulation, *or private*
 23 *employer policy*, whether now in force or hereafter
 24 enacted or promulgated, expressly prohibits the activity
 25 giving rise to the injury, disability, or death. However, this
 26 paragraph shall not apply to relieve the employer from
 27 liability for benefits for any injury, disability, or death of
 28 a firefighter when the firefighter is acting pursuant to
 29 Section 1799.107 of the Health and Safety Code.

30 ~~SEC. 2. Notwithstanding Section 17610 of the~~
 31 ~~Government Code, if the Commission on State Mandates~~
 32 ~~determines that this act contains costs mandated by the~~
 33 ~~state, reimbursement to local agencies and school~~
 34 ~~districts for those costs shall be made pursuant to Part 7~~
 35 ~~(commencing with Section 17500) of Division 4 of Title~~
 36 ~~2 of the Government Code. If the statewide cost of the~~
 37 ~~claim for reimbursement does not exceed one million~~
 38 ~~dollars (\$1,000,000), reimbursement shall be made from~~
 39 ~~the State Mandates Claims Fund.~~



1 ~~Notwithstanding Section 17580 of the Government~~
2 ~~Code, unless otherwise specified, the provisions of this act~~
3 ~~shall become operative on the same date that the act~~
4 ~~takes effect pursuant to the California Constitution.~~

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