

AMENDED IN ASSEMBLY MARCH 19, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 384

**Introduced by Assembly Members Portantino and Galgiani
(Principal coauthor: Assembly Member Garcia)**

**(Coauthors: Assembly Members Adams, Arambula, Beall, Benoit,
Berryhill, Carter, Cook, DeVore, Hernandez, Huffman, Jeffries,
Karnette, Ma, Krekorian, Ma, Mendoza, Mullin, Nava, Sharon
Runner, Ruskin, Salas, Silva, Smyth, Soto, Strickland, and
Torricio Torrico, and Wolk)**

**(Coauthors: Senators Corbett, Denham, Maldonado, Negrete McLeod,
Wiggins, and Wyland 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 or surviving child or stepchild of a deceased permanent career civilian federal firefighter who was *a resident of, and* performing services in, this state, upon specified circumstances.

(2) The Public Employees’ Medical and Hospital Care Act provides continuing health benefits 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 permanent career civilian federal firefighter who *resides and* performs 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.

1 (b) Captain Mark Loutzenhiser and Engine Operators Jess
2 McLean, Jason McKay, Daniel Hoover-Najera, and Pablo Cerda
3 died after their engine was burned over while battling the
4 wind-whipped fire, which grew to more than 24,000 acres in just
5 24 hours.

6 (c) All five of the fallen federal firefighters who resided in
7 California served on Engine 57 at the San Jacinto Ranger Station
8 in Idyllwild.

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

14 (e) When a firefighter is killed in the line of duty, he or she not
15 only leaves behind a family who must suffer the loss of a loved
16 one, but also a family that may be faced with a severe financial
17 squeeze. This financial loss can take a terrible toll on the surviving
18 family's pocket book and ultimately makes the cost of providing
19 for postsecondary education and acquiring adequate health
20 insurance virtually impossible.

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

25 (g) It is the intent of the Legislature to clarify that Section 22820
26 of the Government Code applies to those survivors of California
27 permanent career civilian federal firefighters killed in the line of
28 duty.

29 (h) The existing public postsecondary educational fee waivers
30 extended to a survivor of a fallen firefighter ultimately assist
31 survivors in reestablishing their lives in the face of tremendous
32 sacrifice and loss.

33 (i) Section 68120 of the Education Code was intended to apply
34 to any surviving child of a deceased California fire suppression
35 employee. Since the fee waivers' enactment, colleges and
36 universities have administered Section 68120 in a manner that
37 excludes surviving spouses and children of fallen federal
38 firefighters who were residents of, and provided services within,
39 this state.

1 (j) It is the intent of the Legislature to clarify that Section 68120
2 of the Education Code applies to those survivors of California
3 civilian federal firefighters killed in the line of duty.

4 SEC. 3. Section 68120 of the Education Code is amended to
5 read:

6 68120. (a) Notwithstanding any other provision of law, no
7 mandatory systemwide fees or tuition of any kind shall be required
8 of or collected by the Regents of the University of California, the
9 Board of Directors of the Hastings College of the Law, or the
10 Trustees of the California State University from any surviving
11 spouse or surviving child of a deceased person who met all of the
12 following requirements:

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

14 (2) He or she was employed by a public agency, or was a
15 contractor, or an employee of a contractor, performing services
16 for a public agency, or was a permanent career civilian federal
17 firefighter performing services in this state.

18 (3) His or her principal duties consisted of active law
19 enforcement service or active fire suppression and prevention.
20 This section shall not apply to a person whose principal duties
21 were clerical, even if he or she was subject to occasional call or
22 was occasionally called upon to perform duties within the scope
23 of active law enforcement or active fire suppression and prevention.

24 (4) He or she was killed in the performance of active law
25 enforcement or active fire suppression and prevention duties, or
26 died as a result of an accident or an injury caused by external
27 violence or physical force, incurred in the performance of his or
28 her active law enforcement or active fire suppression and
29 prevention duties.

30 (b) Notwithstanding subdivision (a), a person who qualifies for
31 the waiver of mandatory systemwide fees and tuition under this
32 section as a surviving child of a contractor, or of an employee of
33 a contractor, who performed services for a public agency shall, in
34 addition to the requirements set forth in subdivision (a), meet both
35 of the following requirements:

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

38 (2) Documentation that his or her annual income, including the
39 value of any support received from a parent, does not exceed the

1 maximum household income and asset level for an applicant for
2 a Cal Grant B award, as set forth in Section 69432.7.

3 (c) As used in this section:

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

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

10 (3) “Surviving child” means either of the following:

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

12 (B) A surviving stepchild who meets both of the following
13 requirements:

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

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

21 SEC. 4. Section 22820 of the Government Code is amended
22 to read:

23 22820. (a) Upon the death, on or after January 1, 2002, of a
24 firefighter employed by a county, city, city and county, district,
25 or other political subdivision of the state, a firefighter employed
26 by the Department of Forestry and Fire Protection, a permanent
27 career civilian federal firefighter *who was a resident of this state*
28 *and* performing services within this state, or a peace officer as
29 defined in Section 830.1, 830.2, 830.3, 830.31, 830.32, 830.33,
30 830.34, 830.35, 830.36, 830.37, 830.38, 830.39, 830.4, 830.5,
31 830.55, or 830.6 of the Penal Code, if the death occurred as a result
32 of injury or disease arising out of and in the course of his or her
33 official duties, the surviving spouse or other eligible family member
34 of the deceased firefighter or peace officer, if uninsured, is deemed
35 to be an annuitant under Section 22760 for purposes of enrollment.
36 All eligible family members of the deceased firefighter or peace
37 officer who are uninsured may enroll in a health benefit plan of
38 the surviving spouse’s choice. However, an unmarried child of the
39 surviving spouse is not eligible to enroll in a health benefit plan
40 under this section if the child was not a family member under

1 Section 22775 and regulations pertinent thereto prior to the
2 firefighter's or peace officer's date of death. The employer of the
3 deceased firefighter or peace officer shall notify the board within
4 10 days of the death of the employee if a spouse or family member
5 may be eligible for enrollment in a health benefit plan under this
6 section.

7 (b) Upon notification, the board shall promptly determine
8 eligibility and shall forward to the eligible spouse or family
9 member the materials necessary for enrollment. In the event of a
10 dispute regarding whether a firefighter's or peace officer's death
11 occurred as a result of injury or disease arising out of and in the
12 course of his or her official duties as required under subdivision
13 (a), that dispute shall be determined by the Workers' Compensation
14 Appeals Board, subject to the same procedures and standards
15 applicable to hearings relating to claims for workers' compensation
16 benefits. The jurisdiction of the Workers' Compensation Appeals
17 Board under this section is limited to the sole issue of industrial
18 causation and this section does not authorize the Workers'
19 Compensation Appeals Board to award costs against the system.

20 (c) (1) Notwithstanding any other provision of law, but except
21 as otherwise provided in subdivision (d), the state shall pay the
22 employer contribution required for enrollment under this part for
23 the uninsured surviving spouse of a deceased firefighter or peace
24 officer for life, and the other uninsured eligible family members
25 of a deceased firefighter or peace officer, provided the family
26 member meets the eligibility requirements of Section 22775 and
27 regulations pertinent thereto.

28 (2) The contribution payable by the state for each uninsured
29 surviving spouse and other uninsured eligible family members
30 shall be adjusted annually and be equal to the amount specified in
31 Section 22871.

32 (3) The state's contribution under this section shall commence
33 on the effective date of enrollment of the uninsured surviving
34 spouse or other uninsured eligible family members. The
35 contribution of each surviving spouse and eligible family member
36 shall be the total cost per month of the benefit coverage afforded
37 him or her under the plan less the portion contributed by the state
38 pursuant to this section.

39 (d) The cancellation of coverage by an annuitant, as defined in
40 this section, shall be final without option to reenroll, unless

1 coverage is canceled because of enrollment in an insurance plan
2 from another source.

3 (e) For purposes of this section, “surviving spouse” means a
4 husband or wife who was married to the deceased firefighter or
5 peace officer on the deceased’s date of death and either for a
6 continuous period of at least one year prior to the date of death or
7 prior to the date the deceased firefighter or peace officer sustained
8 the injury or disease resulting in death.

9 (f) For purposes of this section, “uninsured” means that the
10 surviving spouse is not enrolled in an employer-sponsored health
11 plan under which the employer contribution covers 100 percent
12 of the cost of health care premiums.

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

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