

AMENDED IN ASSEMBLY APRIL 19, 2007

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, *Horton*, Huffman, Jeffries, Karnette, Krekorian, Ma, Mendoza, Mullin, Nava, Sharon Runner, Ruskin, Salas, Silva, Smyth, Soto, Strickland, Swanson, Torrico, 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 or surviving child or stepchild of a deceased ~~permanent career civilian federal~~ firefighter *employed by the federal government* who was a resident of, and ~~performing~~ *whose regular duty assignment was to perform firefighting services in, this state, upon specified circumstances.*

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

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

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

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

10 ~~(c) All five of the fallen federal firefighters who resided in
11 California served on Engine 57 at the San Jacinto Ranger Station
12 in Idyllwild.~~

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 ~~permanent career civilian~~ federal firefighters killed in the line of
37 duty.

38 (h) The existing public postsecondary educational fee waivers
39 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 ~~of a deceased California fire suppression~~
5 ~~employee or spouse of a California firefighter killed in the line of~~
6 ~~duty~~. Since the fee waivers' enactment, colleges and universities
7 have administered Section 68120 in a manner that excludes
8 surviving spouses and children of fallen federal firefighters who
9 were residents of, and provided services within, 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 ~~civilian~~ 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 ~~permanent career civilian federal~~
26 ~~firefighter performing~~ *firefighter employed by the federal*
27 *government whose regular duty assignment was to perform*
28 *firefighting* services in this state.

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

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

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

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

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

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

22 (B) A surviving stepchild who meets both of the following
23 requirements:

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

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

31 SEC. 4. Section 22820 of the Government Code is amended
32 to read:

33 22820. (a) Upon the death, on or after January 1, 2002, of a
34 firefighter employed by a county, city, city and county, district,
35 or other political subdivision of the state, a firefighter employed
36 by the Department of Forestry and Fire Protection, a ~~permanent~~
37 ~~career civilian federal firefighter who was a resident of this state~~
38 ~~and performing firefighter employed by the federal government~~
39 ~~who was a resident of this state and whose regular duty assignment~~
40 ~~was to perform firefighting services within this state, or a peace~~

1 officer as defined in Section 830.1, 830.2, 830.3, 830.31, 830.32,
2 830.33, 830.34, 830.35, 830.36, 830.37, 830.38, 830.39, 830.4,
3 830.5, 830.55, or 830.6 of the Penal Code, if the death occurred
4 as a result of injury or disease arising out of and in the course of
5 his or her official duties, the surviving spouse or other eligible
6 family member of the deceased firefighter or peace officer, if
7 uninsured, is deemed to be an annuitant under Section 22760 for
8 purposes of enrollment. All eligible family members of the
9 deceased firefighter or peace officer who are uninsured may enroll
10 in a health benefit plan of the surviving spouse's choice. However,
11 an unmarried child of the surviving spouse is not eligible to enroll
12 in a health benefit plan under this section if the child was not a
13 family member under Section 22775 and regulations pertinent
14 thereto prior to the firefighter's or peace officer's date of death.
15 The employer of the deceased firefighter or peace officer shall
16 notify the board within 10 days of the death of the employee if a
17 spouse or family member may be eligible for enrollment in a health
18 benefit plan under this section.

19 (b) Upon notification, the board shall promptly determine
20 eligibility and shall forward to the eligible spouse or family
21 member the materials necessary for enrollment. In the event of a
22 dispute regarding whether a firefighter's or peace officer's death
23 occurred as a result of injury or disease arising out of and in the
24 course of his or her official duties as required under subdivision
25 (a), that dispute shall be determined by the Workers' Compensation
26 Appeals Board, subject to the same procedures and standards
27 applicable to hearings relating to claims for workers' compensation
28 benefits. The jurisdiction of the Workers' Compensation Appeals
29 Board under this section is limited to the sole issue of industrial
30 causation and this section does not authorize the Workers'
31 Compensation Appeals Board to award costs against the system.

32 (c) (1) Notwithstanding any other provision of law, but except
33 as otherwise provided in subdivision (d), the state shall pay the
34 employer contribution required for enrollment under this part for
35 the uninsured surviving spouse of a deceased firefighter or peace
36 officer for life, and the other uninsured eligible family members
37 of a deceased firefighter or peace officer, provided the family
38 member meets the eligibility requirements of Section 22775 and
39 regulations pertinent thereto.

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

5 (3) The state’s contribution under this section shall commence
6 on the effective date of enrollment of the uninsured surviving
7 spouse or other uninsured eligible family members. The
8 contribution of each surviving spouse and eligible family member
9 shall be the total cost per month of the benefit coverage afforded
10 him or her under the plan less the portion contributed by the state
11 pursuant to this section.

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

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

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

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

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

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