

AMENDED IN SENATE SEPTEMBER 4, 2007

AMENDED IN SENATE JULY 5, 2007

AMENDED IN ASSEMBLY MAY 29, 2007

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 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, *Torlakson*, 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~~

~~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 enact the California Fallen Federal Firefighter Survivor Assistance Act of 2007, which 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.

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

4 ~~(h) The existing public postsecondary educational fee waivers~~
5 ~~extended to a survivor of a fallen firefighter ultimately assist~~
6 ~~survivors in reestablishing their lives in the face of tremendous~~
7 ~~sacrifice and loss.~~

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

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

18 ~~SEC. 3. Section 68120 of the Education Code is amended to~~
19 ~~read:~~

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

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

28 ~~(2) He or she was employed by a public agency, or was a~~
29 ~~contractor, or an employee of a contractor, performing services~~
30 ~~for a public agency, or was a firefighter employed by the federal~~
31 ~~government whose regular duty assignment was to perform~~
32 ~~firefighting services in this state.~~

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

39 ~~(4) He or she was killed in the performance of active law~~
40 ~~enforcement or active fire suppression and prevention duties, or~~

1 died as a result of an accident or an injury caused by external
2 violence or physical force, incurred in the performance of his or
3 her active law enforcement or active fire suppression and
4 prevention duties.

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

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

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

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

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

28 (d) As used in this section:

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

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

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

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

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

38 (B) A surviving stepchild who meets both of the following
39 requirements:

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

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

8 ~~SEC. 4.~~

9 *SEC. 3* Section 22820 of the Government Code is amended to
10 read:

11 22820. (a) Upon the death, on or after January 1, 2002, of a
12 firefighter employed by a county, city, city and county, district,
13 or other political subdivision of the state, a firefighter employed
14 by the Department of Forestry and Fire Protection, a firefighter
15 employed by the federal government who was a resident of this
16 state and whose regular duty assignment was to perform
17 firefighting services within this state, or a peace officer as defined
18 in Section 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, 830.34,
19 830.35, 830.36, 830.37, 830.38, 830.39, 830.4, 830.5, 830.55, or
20 830.6 of the Penal Code, if the death occurred as a result of injury
21 or disease arising out of and in the course of his or her official
22 duties, the surviving spouse or other eligible family member of
23 the deceased firefighter or peace officer, if uninsured, is deemed
24 to be an annuitant under Section 22760 for purposes of enrollment.
25 All eligible family members of the deceased firefighter or peace
26 officer who are uninsured may enroll in a health benefit plan of
27 the surviving spouse's choice. However, an unmarried child of the
28 surviving spouse is not eligible to enroll in a health benefit plan
29 under this section if the child was not a family member under
30 Section 22775 and regulations pertinent thereto prior to the
31 firefighter's or peace officer's date of death. The employer of the
32 deceased firefighter or peace officer shall notify the board within
33 10 days of the death of the employee if a spouse or family member
34 may be eligible for enrollment in a health benefit plan under this
35 section.

36 (b) Upon notification, the board shall promptly determine
37 eligibility and shall forward to the eligible spouse or family
38 member the materials necessary for enrollment. In the event of a
39 dispute regarding whether a firefighter's or peace officer's death
40 occurred as a result of injury or disease arising out of and in the

1 course of his or her official duties as required under subdivision
2 (a), that dispute shall be determined by the Workers' Compensation
3 Appeals Board, subject to the same procedures and standards
4 applicable to hearings relating to claims for workers' compensation
5 benefits. The jurisdiction of the Workers' Compensation Appeals
6 Board under this section is limited to the sole issue of industrial
7 causation and this section does not authorize the Workers'
8 Compensation Appeals Board to award costs against the system.

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

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

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

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

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

38 (f) For purposes of this section, "uninsured" means that the
39 surviving spouse is not enrolled in an employer-sponsored health

1 plan under which the employer contribution covers 100 percent
2 of the cost of health care premiums.

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

6 ~~SEC. 5.~~

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

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