

AMENDED IN SENATE APRIL 18, 2012

SENATE BILL

No. 1468

Introduced by Senator ~~Gaines Calderon~~

February 24, 2012

An act to add and repeal Sections ~~12599.5 and 12635.5~~ 12599.4, 12599.5, and 12635.5 of the Health and Safety Code, relating to fireworks, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1468, as amended, ~~Gaines Calderon~~. Fireworks.

Existing law authorizes the retail sale of safe and sane fireworks from June 28 to July 6, annually, pursuant to a license issued by the State Fire Marshal, unless otherwise prohibited or regulated by law or ordinance.

This bill would authorize the State Fire Marshal, until January 15, 2018, to issue annual one-time wholesaler licenses for the purpose of authorizing the sale of safe and sane fireworks by a wholesaler to an entity holding a retail license for the period surrounding New Year's Eve, subject to certain conditions. The bill would require the State Fire Marshal to annually establish the wholesaler license fee. The bill would require wholesaler license fees collected by the State Fire Marshal to be deposited in the Fireworks Special Data Collection Fund, which the bill would create as a continuously appropriated special fund in the State Treasury. Moneys in the fund would be available for actual reasonable costs incurred by the State Fire Marshal and local, participating jurisdictions to develop, implement, analyze, and report the enhanced fireworks special data collection program and for administrative expenses. By creating a new continuously appropriated special fund, the bill would make an appropriation. ~~This~~

This bill would further authorize, until January 2, 2018, the sale of certified safe and sane fireworks from 9 a.m. on December 26 to midnight of January 1 of the following year pursuant to a license issued by the State Fire Marshal, if authorized by a charter city, city, county, fire district, or city and county ordinance or resolution that may also restrict the hours of use of those fireworks. Since a violation of this provision or other existing related provisions in connection with the sale of those fireworks would be a misdemeanor, the bill would impose a state-mandated local program by creating new crimes.

The bill would also authorize, until January 2, 2018, a charter city, city, county, fire district, or city and county that adopts an ordinance or resolution authorizing the sale of safe and sane fireworks to require each applicant receiving a permit to pay a fee to the charter city, city, county, fire district, or city and county of a pro rata portion of the costs incurred by the charter city, city, county, fire district, or city and county for, among other things, processing and issuing fireworks permits, inspection of fireworks stands, public awareness and education campaigns regarding the safe and responsible use of safe and sane fireworks, and related fire operation and suppression efforts, as specified. The bill would specify that the pro rata portion of those costs shall be based on a percentage of the permittee's sales and use tax return for the applicable permit period, not to exceed 7% of the gross sales of the fireworks sold in the charter city, city, county, fire district, or city and county.

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.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

Vote: ~~majority~~ $\frac{2}{3}$. Appropriation: ~~no~~-yes. Fiscal committee: yes. State-mandated local program: yes.

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

- 1 *SECTION 1. The Legislature hereby finds and declares all of*
- 2 *the following:*

1 (a) Existing law, Section 13110.5 of the Health and Safety Code,
2 requires the State Fire Marshal to gather statistical information
3 on all fires, medical aid incidents, and hazardous materials
4 incidents occurring within this state, including, but not limited to,
5 those related to all types of pyrotechnic devices such as illegal
6 fireworks, safe and sane fireworks, unknown fireworks, and public
7 display fireworks.

8 (b) Existing law further requires the chief fire official of each
9 fire department operated by the state, a city, city and county, fire
10 protection district, organized fire company, or other public or
11 private entity that provides fire protection, to furnish information
12 and data to the State Fire Marshal relating to each fire that occurs
13 within his or her area of jurisdiction.

14 (c) For purposes of the continued regulation of all pyrotechnic
15 devices in California and, more specifically, for purposes of
16 determining whether the Legislature should continue to allow,
17 after January 2, 2018, the sale and use of safe and sane fireworks
18 for the period immediately before each New Year's Eve, it is hereby
19 determined that an enhanced fireworks data collection study, in
20 a limited number of jurisdictions, is needed to assist the Legislature
21 in determining if it should extend the rights and privileges conveyed
22 by this act beyond January 2, 2018.

23 (d) It is further the intent of the Legislature that the annual New
24 Year's Eve license fee imposed on a wholesaler of safe and sane
25 fireworks shall not exceed the reasonable costs for the benefit
26 conferred in granting this privilege to a wholesaler.

27 SEC. 2. Section 12599.4 is added to the Health and Safety
28 Code, to read:

29 12599.4. (a) Notwithstanding any other law, the State Fire
30 Marshal shall issue separate one-time annual New Year's Eve
31 wholesaler licenses pursuant to this section for the purpose of
32 authorizing the sale of safe and sane fireworks by a wholesale
33 distributor to an entity already having an existing standard
34 wholesaler license for sale to an entity holding a retailer's license,
35 pursuant to Section 12599.5, for retail sale within this state for
36 the period beginning from 9 a.m. on December 26 of a year within
37 2013 to 2017, inclusive, to midnight of January 1 of the following
38 year, inclusive.

39 (1) The wholesaler license fee shall be paid to the State Fire
40 Marshal on or before September 1 of each year.

1 (2) *Only a wholesaler who has paid the annual New Year's Eve*
2 *wholesaler license fee and has been issued a license by the State*
3 *Fire Marshal for the privilege of selling or distributing safe and*
4 *sane fireworks may sell fireworks to an entity holding a retail*
5 *license for the sale of safe and sane fireworks for the period*
6 *beginning 9 a.m. on December 26 to midnight of January 1 of the*
7 *following year, inclusive.*

8 (b) *On or before August 1, 2013, and on or before April 1, of*
9 *each year thereafter, the State Fire Marshal shall, pursuant to his*
10 *or her regulatory authority, and in consultation with the State Fire*
11 *Marshal's Fireworks Advisory Committee, which consists of*
12 *representatives from local fire and law enforcement agencies and*
13 *the fireworks industry, establish a New Year's Eve wholesaler*
14 *license fee, in a sum that does not exceed the amount reasonably*
15 *necessary for the fireworks data collection activities of the state*
16 *that benefit the recipients of a wholesaler license pursuant to this*
17 *section.*

18 (c) *The New Year's Eve wholesaler license fees collected by the*
19 *State Fire Marshal pursuant to this section shall be deposited in*
20 *the Fireworks Special Data Collection Fund, which is hereby*
21 *established as a special fund in the State Treasury, separate and*
22 *apart from all other public money or funds of this state. All other*
23 *moneys received pursuant to this section shall be deposited in the*
24 *fund. Notwithstanding Section 13340 of the Government Code, all*
25 *moneys in the fund shall be continuously appropriated to the State*
26 *Fire Marshal for the study and the actual reasonable costs incurred*
27 *by the State Fire Marshal and the local, participating jurisdictions*
28 *to develop, implement, analyze, and report the enhanced fireworks*
29 *special data collection program, as described in subdivision (e),*
30 *and for reasonable administrative expenses incurred in the*
31 *collection of the license fees pursuant to this section. Moneys in*
32 *the fund shall not be used for any other purpose.*

33 (d) *The Fireworks Special Data Collection Fund may also*
34 *receive funding from any of the following sources:*

35 (1) *Voluntary contributions from the fireworks industry.*

36 (2) *Federal, state, or private grants.*

37 (e) *In addition to the obligations described in Section 13110.5,*
38 *on or before May 1, 2013, the State Fire Marshal's Fireworks*
39 *Advisory Committee shall review and approve a plan developed*

1 *by the fireworks industry to collect and analyze data relating to*
2 *the sale of fireworks and related fire, injury, and disposal issues.*

3 *(1) The plan shall contain, but not be limited to, a sample design*
4 *and selection method to accurately capture a data set to be used*
5 *for statistical analysis relating to fires, damages, seizures, arrests,*
6 *administrative citations, and fireworks disposal issues caused by*
7 *dangerous fireworks and safe and sane fireworks for the period*
8 *surrounding both the 4th of July and New Year's Eve.*

9 *(2) The data set shall be verified by a university or other*
10 *nationally recognized independent survey design expert. This plan*
11 *for data collection shall attempt to collect the requisite data not*
12 *only in the target communities, but also in those communities*
13 *immediately adjoining or contiguous to the target communities.*

14 *(f) The sale of safe and sane fireworks for the period of 9 a.m.*
15 *on December 26 of a year within 2013 to 2017, inclusive, to*
16 *midnight of January 1 of the following year, inclusive, shall only*
17 *be permitted if, by September 15 of each year, the State Fire*
18 *Marshal, in consultation with the State Fire Marshal's Fireworks*
19 *Advisory Committee, determines that there are sufficient funds*
20 *within the Fireworks Special Data Collection Fund to cover the*
21 *actual and reasonable costs for that year associated with the*
22 *special data collection program established by this section.*

23 *(g) This section shall remain in effect only until January 15,*
24 *2018, and as of that date is repealed, unless a later enacted statute,*
25 *that is enacted before January 15, 2018, deletes or extends that*
26 *date.*

27 **SECTION 4.**

28 *SEC. 3.* Section 12599.5 is added to the Health and Safety
29 Code, to read:

30 12599.5. (a) Notwithstanding Sections 12599 and 12672, each
31 year from 2013 to 2017, inclusive, the State Fire Marshal shall
32 issue separate one-time retail licenses pursuant to this section that
33 shall authorize the retail sale of safe and sane fireworks within this
34 state only from 9 a.m. on December 26 of a year within 2013 to
35 2017, inclusive, to midnight of January 1 of the following year,
36 inclusive. A license issued pursuant to this section shall be valid
37 for only one seven-day period and shall expire at the end of the
38 period for which it is valid. All fireworks sold pursuant to a license
39 issued pursuant to this section shall have been certified as safe and
40 sane by the State Fire Marshal as of June of the year in which the

1 validity of the license commences. No other license issued pursuant
2 to this chapter shall authorize the sale of fireworks during that
3 period.

4 (b) No retail license shall be issued for the license period
5 authorized by this section unless the charter city, city, county, fire
6 district, or city and county having jurisdiction over the fixed
7 location where the fireworks would be sold adopts an ordinance
8 or resolution allowing that sale, and the application for that license
9 is received by the State Fire Marshal on or before December 15
10 of the year in which the validity of the license is to commence.
11 The ordinance or resolution authorizing the sale of those fireworks
12 may limit the period of use of those fireworks to specified days
13 and hours within the period during which the sale is authorized by
14 this section.

15 (c) This section shall become inoperative on January 2, 2018,
16 and, as of January 2, 2018, is repealed, unless a later enacted
17 statute, that is enacted before January 2, 2018, deletes or extends
18 the dates on which it becomes inoperative and is repealed.

19 ~~SEC. 2.~~

20 *SEC. 4.* Section 12635.5 is added to the Health and Safety
21 Code, to read:

22 12635.5. (a) A charter city, city, county, fire district, or city
23 and county that adopts an ordinance or resolution pursuant to
24 Section 12599 or 12599.5 may, through adoption of an ordinance
25 or resolution by the governing body, require each applicant
26 receiving a permit to pay a fee to the charter city, city, county, fire
27 district, or city and county of a pro rata portion of the costs the
28 charter city, city, county, fire district, or city and county incurs
29 related to any of the following:

- 30 (1) Processing and issuing permits.
- 31 (2) Inspection of fireworks stands.
- 32 (3) Public education and awareness campaigns regarding the
33 safe and responsible use of safe and sane fireworks, and the dangers
34 and risks posed by the use of illegal fireworks.
- 35 (4) Enforcing the provisions of the code of the charter city, city,
36 county, fire district, or city and county with respect to the sale and
37 use of safe and sane fireworks, including extra personnel time, and
38 cleanup of the fireworks trash and debris. "Extra personnel time"
39 shall be defined as employee or contracted employee time that the
40 charter city, city, county, fire district, or city and county would

1 not otherwise incur but for the sale and use of safe and sane
2 fireworks.

3 (5) Fire operation and suppression efforts that are directly related
4 to safe and sane fireworks.

5 (b) The pro rata share of the costs shall be determined using
6 gross sales as shown on each permittee's sales and use tax return
7 for the applicable period. The pro rata share of costs shall not
8 exceed 7 percent of the gross sales of the fireworks sold in the
9 charter city, city, county, fire district, or city and county during
10 the applicable period.

11 (c) This section shall remain in effect only until January 2, 2018,
12 and as of that date is repealed, unless a later enacted statute, that
13 is enacted before January 2, 2018, deletes or extends that date.

14 ~~SEC. 3.~~

15 *SEC. 5.* No reimbursement is required by this act pursuant to
16 Section 6 of Article XIII B of the California Constitution because
17 the only costs that may be incurred by a local agency or school
18 district will be incurred because this act creates a new crime or
19 infraction, eliminates a crime or infraction, or changes the penalty
20 for a crime or infraction, within the meaning of Section 17556 of
21 the Government Code, or changes the definition of a crime within
22 the meaning of Section 6 of Article XIII B of the California
23 Constitution.