

AMENDED IN SENATE MAY 1, 2012
AMENDED IN SENATE APRIL 18, 2012

SENATE BILL

No. 1468

Introduced by Senator Calderon

February 24, 2012

An act to add and repeal Sections 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, 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~~ 2016, 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 bill would further authorize, until January 2, ~~2018~~ 2016, the sale of certified safe and sane fireworks from 9 a.m. on December 26 of 2014 and 2015 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~~ 2016, 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: $\frac{2}{3}$. Appropriation: 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:

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

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

16 (c) For purposes of the continued regulation of all pyrotechnic
17 devices in California and, more specifically, for purposes of
18 determining whether the Legislature should continue to allow,
19 after January 2, ~~2018~~ 2016, the sale and use of safe and sane
20 fireworks for the period immediately before each New Year's Eve,
21 it is hereby determined that an enhanced fireworks data collection
22 study, in a limited number of jurisdictions, is needed to assist the
23 Legislature in determining if it should extend the rights and
24 privileges conveyed by this act beyond January 2, ~~2018~~ 2016.

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

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

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

1 2013 to 2017, inclusive 2014 and 2015, to midnight of January 1
2 of the following year, inclusive.

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

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

12 (b) On or before ~~August 1, 2013, and on or before~~ April 1, of
13 ~~each year thereafter~~ 2014 and 2015, the State Fire Marshal shall,
14 pursuant to his or her regulatory authority, and in consultation with
15 the State Fire Marshal's Fireworks Advisory Committee, which
16 consists of representatives from local fire and law enforcement
17 agencies and the fireworks industry, establish a New Year's Eve
18 wholesaler license fee, in a sum that does not exceed the amount
19 reasonably necessary for the fireworks data collection activities
20 of the state that benefit the recipients of a wholesaler license
21 pursuant to this section.

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

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

39 (1) Voluntary contributions from the fireworks industry.

40 (2) Federal, state, or private grants.

1 (e) In addition to the obligations described in Section 13110.5,
2 on or before May 1, ~~2013~~ 2014, the State Fire Marshal's Fireworks
3 Advisory Committee shall review and approve a plan developed
4 by the fireworks industry to collect and analyze data relating to
5 the sale of fireworks and related fire, injury, and disposal issues.

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

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

17 (f) The sale of safe and sane fireworks for the period of 9 a.m.
18 on December 26 of ~~a year within 2013 to 2017, inclusive, 2014~~
19 ~~and 2015~~ to midnight of January 1 of the following year, inclusive,
20 shall only be permitted if, by September 15 of each year, the State
21 Fire Marshal, in consultation with the State Fire Marshal's
22 Fireworks Advisory Committee, determines that there are sufficient
23 funds within the Fireworks Special Data Collection Fund to cover
24 the actual and reasonable costs for that year associated with the
25 special data collection program established by this section.

26 (g) This section shall remain in effect only until January 15,
27 ~~2018~~ 2016, and as of that date is repealed, unless a later enacted
28 statute, that is enacted before January 15, 2018, deletes or extends
29 that date.

30 SEC. 3. Section 12599.5 is added to the Health and Safety
31 Code, to read:

32 12599.5. (a) Notwithstanding Sections 12599 and 12672, ~~each~~
33 ~~year from 2013 to 2017, inclusive, in 2014 and 2015~~ the State Fire
34 Marshal shall issue separate one-time retail licenses pursuant to
35 this section that shall authorize the retail sale of safe and sane
36 fireworks within this state only from 9 a.m. on December 26 of ~~a~~
37 ~~year within 2013 to 2017, inclusive, 2014 and 2015~~ to midnight
38 of January 1 of the following year, inclusive. A license issued
39 pursuant to this section shall be valid for only one seven-day period
40 and shall expire at the end of the period for which it is valid. All

1 fireworks sold pursuant to a license issued pursuant to this section
2 shall have been certified as safe and sane by the State Fire Marshal
3 as of June of the year in which the validity of the license
4 commences. No other license issued pursuant to this chapter shall
5 authorize the sale of fireworks during that period.

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

17 (c) This section shall become inoperative on January 2, ~~2018~~
18 2016, and, as of January 2, ~~2018~~ 2016, is repealed, unless a later
19 enacted statute, that is enacted before January 2, ~~2018~~ 2016, deletes
20 or extends the dates on which it becomes inoperative and is
21 repealed.

22 SEC. 4. Section 12635.5 is added to the Health and Safety
23 Code, to read:

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

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

1 shall be defined as employee or contracted employee time that the
2 charter city, city, county, fire district, or city and county would
3 not otherwise incur but for the sale and use of safe and sane
4 fireworks.

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

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

13 (c) This section shall remain in effect only until January 2, ~~2018~~
14 ~~2016~~, and as of that date is repealed, unless a later enacted statute,
15 that is enacted before January 2, ~~2018~~ ~~2016~~, deletes or extends
16 that date.

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