

AMENDED IN ASSEMBLY JUNE 12, 2014

SENATE BILL

No. 866

Introduced by Committee on Budget and Fiscal Review

January 9, 2014

~~An act relating to the Budget Act of 2014. An act to amend Sections 12722 and 12728 of, and to add Section 12559 to, the Health and Safety Code, relating to fireworks, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 866, as amended, Committee on Budget and Fiscal Review.
~~Budget Act of 2014. Fireworks: tax on distribution.~~

Existing law authorizes the annual retail sale of safe and sane fireworks from June 28 to July 6, inclusive, pursuant to a license issued by the State Fire Marshal, unless otherwise prohibited or regulated by law or ordinance. Existing law authorizes various entities, including the State Fire Marshal, to seize certain prohibited fireworks. Existing law requires an authority that seizes fireworks to notify the State Fire Marshal of the seizure and to provide specified information. Existing law requires the State Fire Marshal to dispose of the seized fireworks and requires dangerous fireworks to be disposed of according to specified procedures. Existing law establishes the State Fire Marshal Fireworks Enforcement and Disposal Fund (fund) in the State Treasury. Existing law requires moneys in the fund to be used by the State Fire Marshal for various purposes, including for the education of public safety agencies in the proper handling and management of dangerous fireworks and to further assist in public safety and education efforts within the general public as well as public safety agencies on the proper

and responsible use of safe and sane fireworks. Existing law makes a violation of the law and regulations relating to fireworks a crime.

This bill would require the moneys in the fund to be used for the training of public safety agencies in the proper handling and management of dangerous fireworks and to further assist in public safety efforts within the general public as well as public safety agencies on the proper and responsible use, seizure, and storage of safe and sane fireworks. The bill would also authorize moneys in the fund to be used for the disposal of any seized fireworks and any infrastructure requirements necessary for the disposal of fireworks as well as used for the administration of the fund by the Office of the State Fire Marshal or its contracted designee.

This bill would require, commencing January 1, 2015, a distributor, as defined, to pay a tax upon distribution, as defined, of safe and sane fireworks, as provided. The bill would require the revenue from the tax to be deposited into the fund to be used for the purposes described above. The bill would authorize the State Fire Marshal to adjust the tax rate if the revenue in the fund is not estimated to cover expenses. The bill would specifically exclude a violation of these provisions from being a crime. The bill would also authorize the seizure of safe and sane fireworks distributed in this state by an unlicensed distributor for which the required tax has not been paid.

This bill would declare that it is to take effect immediately as an urgency statute.

~~This bill would express the intent of the Legislature to enact statutory changes relating to the Budget Act of 2014.~~

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: ~~no~~^{yes}. State-mandated local program: no.

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

- 1 SECTION 1. Section 12559 is added to the Health and Safety
- 2 Code, to read:
- 3 12559. (a) Commencing January 1, 2015, a distributor shall
- 4 pay a tax upon his or her distribution of safe and sane fireworks
- 5 at the rate of ten cents (\$0.10) per pound of the total weight of the
- 6 fireworks, including any packaging, unless adjusted by the State
- 7 Fire Marshal pursuant to subdivision (c).
- 8 (b) (1) Funds received by the State Fire Marshal or its designee
- 9 pursuant to this section shall be deposited into the State Fire

1 *Marshal Fireworks Enforcement and Disposal Fund established*
2 *pursuant to Section 12728.*

3 (2) *Funds received pursuant to this section shall only be used,*
4 *upon appropriation by the Legislature, for the purposes listed in*
5 *Section 12728.*

6 (c) *The State Fire Marshal may adjust the rate specified in*
7 *subdivision (a), not to exceed twenty cents (\$0.20) per pound, at*
8 *a public meeting to be held in January of each year in order to*
9 *provide sufficient revenues to pay for the estimated expenses*
10 *described in Section 12728.*

11 (d) *The State Fire Marshal may contract with another public*
12 *agency to administer this section.*

13 (e) *The State Fire Marshal is authorized to adopt emergency*
14 *regulations necessary to implement this section during the 2014–15*
15 *fiscal year in accordance with the rulemaking provisions of the*
16 *Administrative Procedure Act (Chapter 3.5 (commencing with*
17 *Section 11340) of Part 1 of Division 3 of Title 2 of the Government*
18 *Code). The adoption of emergency regulations shall be deemed*
19 *an emergency and necessary for the immediate preservation of*
20 *the public peace, health, and safety, or general welfare.*

21 (f) *The State Fire Marshal may, by regulation, establish the*
22 *period for reporting of information, returns, billings, and payment*
23 *of taxes due pursuant to this section.*

24 (g) *A violation of this section, or any regulation adopted*
25 *pursuant to this section, does not constitute a crime for purposes*
26 *of Section 12700.*

27 (h) *For purposes of this section, the following terms have the*
28 *following meanings:*

29 (1) (A) *“Distribution” means either or both of the following:*

30 (i) *The sale of previously untaxed safe and sane fireworks in*
31 *this state.*

32 (ii) *The use or consumption of previously untaxed safe and sane*
33 *fireworks in this state. For purposes of this clause, “use or*
34 *consumption” includes the exercise of a right or power over safe*
35 *and sane fireworks incident to the ownership of those fireworks,*
36 *other than the sale of the safe and sane fireworks or the keeping*
37 *or retention of those fireworks by a licensee pursuant to Section*
38 *12571, 12572, or 12573.*

39 (B) *For purposes of this paragraph, “previously untaxed safe*
40 *and sane fireworks” means fireworks that have not yet been*

1 distributed in a manner as to result in a tax liability under this
2 section.

3 (2) “Distributor” means either of the following:

4 (A) A person who holds a license issued by the State Fire
5 Marshal pursuant to Section 12571, 12572, or 12573.

6 (B) A person who does not hold a license described in
7 subparagraph (A) and who, after the effective date of this section,
8 distributes, as that term is described in paragraph (1), safe and
9 sane fireworks in this state.

10 SEC. 2. Section 12722 of the Health and Safety Code is
11 amended to read:

12 12722. The following fireworks may be seized pursuant to
13 Section 12721:

14 (a) Those fireworks—~~which~~ *that* are sold, offered for sale,
15 possessed, stored, used, or transported within this state prior to
16 having been examined, classified, and registered by the State Fire
17 Marshal, except those specific items designated as samples pending
18 examination, classification, and registration by the State Fire
19 Marshal where the licensee provides documentary evidence that
20 such action by the State Fire Marshal is pending.

21 (b) All imported fireworks possessed without benefit of the
22 filing of notices as required by this part.

23 (c) Safe and sane fireworks stored in violation of the conditions
24 required by the permit as provided in this part.

25 (d) Safe and sane fireworks sold or offered for sale at retail
26 ~~which~~ *that* do not bear the State Fire Marshal label of registration
27 and firing instructions.

28 (e) Safe and sane fireworks sold or offered for sale at retail
29 ~~which~~ *that* are in unsealed packages or containers—~~which~~ *that* do
30 not bear the State Fire Marshal label of registration and firing
31 instructions.

32 (f) Safe and sane fireworks sold or offered for sale at retail
33 before 12 noon on the 28th day of June or after 12 noon on the
34 sixth day of July of each year.

35 (g) Each safe and sane fireworks item sold or offered for sale
36 at retail—~~which~~ *that* does not have its fuse or other igniting device
37 protected by a cap approved by the State Fire Marshal, or groups
38 of fireworks with exposed fuses—~~which~~ *that* are not enclosed in
39 sealed packages—~~which~~ *that* bear the State Fire Marshal label of
40 registration. The State Fire Marshal shall approve—~~such~~ *the* caps

1 as he *or she* determines provide reasonable protection from
2 unintentional ignition of the fireworks.

3 (h) Dangerous fireworks, including fireworks kits, used,
4 possessed, stored, manufactured, or transported by ~~any~~ a person
5 who does not possess a valid permit authorizing ~~any~~ an activity
6 listed in this part.

7 (i) ~~Any fireworks~~ *Fireworks* stored or sold in ~~any~~ a public
8 garage or public oil station, or on ~~any~~ a premises where gasoline
9 or ~~any~~ other class 1 flammable liquids are stored or dispensed.

10 (j) ~~Any fireworks~~ *Fireworks* still possessed by a person who
11 has just thrown ~~any~~ ignited fireworks at ~~any~~ a person or group of
12 persons.

13 (k) ~~Any model~~ *Model* rocket engines or model rockets with
14 engines possessed by ~~any~~ a person *who does not holding hold* a
15 valid permit.

16 (l) ~~Any~~ *An* emergency signaling device sold, offered for sale,
17 or used ~~which~~ *that* does not bear the State Fire Marshal label of
18 registration as required by this part.

19 (m) ~~Any fireworks~~ *Fireworks* or pyrotechnic device offered for
20 sale by ~~any~~ a person violating ~~any~~ provision of this part.

21 (n) *Safe and sane fireworks distributed in this state by an*
22 *unlicensed distributor and for which the tax required pursuant to*
23 *Section 12559 has not been paid.*

24 *SEC. 3. Section 12728 of the Health and Safety Code is*
25 *amended to read:*

26 12728. (a) The State Fire Marshal Fireworks Enforcement and
27 Disposal Fund is hereby established in the State Treasury.

28 (b) All of the moneys collected pursuant to Section 12706 shall
29 be deposited in the fund and shall be available, upon appropriation
30 by the Legislature, to the State Fire Marshal for the exclusive use
31 in statewide programs for the enforcement, prosecution related to,
32 disposal, and management of seized dangerous fireworks, and for
33 the ~~education~~ *training* of public safety agencies in the proper
34 handling and management of dangerous fireworks.

35 (c) All of the moneys collected pursuant to Section 12727 shall
36 be deposited in the fund and shall be available, upon appropriation
37 by the Legislature, to the State Fire Marshal for the exclusive use
38 in statewide programs for all of the following:

1 (1) To further assist in statewide programs for the enforcement,
2 prosecution related to, disposal, and management of seized
3 dangerous fireworks.

4 (2) The ~~education~~ *training* of public safety agencies in the proper
5 handling and management of dangerous fireworks as well as safety
6 issues involving all fireworks and explosives.

7 (3) Assist the State Fire Marshal in identifying and evaluating
8 methods to capture more detailed data relating to fires, damages,
9 and injuries caused by both dangerous and safe and sane fireworks,
10 and to assist with funding the eventual development and
11 implementation of those methods.

12 (4) To further assist in public safety ~~and education~~ efforts within
13 the general public as well as public safety agencies on the proper
14 and responsible ~~use~~ *use, seizure, and storage* of safe and sane
15 fireworks.

16 (5) *Disposal of any seized fireworks and any infrastructure*
17 *requirements necessary for the disposal of fireworks.*

18 (6) *Administration of the fund by the Office of the State Fire*
19 *Marshal or its contracted designee.*

20 *SEC. 4. This act is an urgency statute necessary for the*
21 *immediate preservation of the public peace, health, or safety within*
22 *the meaning of Article IV of the Constitution and shall go into*
23 *immediate effect. The facts constituting the necessity are:*

24 *In order for regulatory changes to be adopted to address the*
25 *public safety and environmental damage caused by illegal*
26 *fireworks in the state at the earliest possible time, it is necessary*
27 *that this act take effect immediately.*

28 ~~SECTION 1. It is the intent of the Legislature to enact statutory~~
29 ~~changes relating to the Budget Act of 2014.~~