

AMENDED IN SENATE APRIL 9, 2007

SENATE BILL

No. 839

Introduced by Senator Calderon

February 23, 2007

An act to amend Sections 12551, 12552, 12678, 12683, 12700, 12702, and 12726 of, and to add Sections *12556, 12557, 12703, 12704, ~~12705~~ 12706, 12707, 12727, and 12728* to, the Health and Safety Code, and to add Section 15301 to the Vehicle Code, relating to fireworks, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 839, as amended, Calderon. Fireworks.

(1) The State Fireworks Law generally regulates the sale, possession, use, and transportation of fireworks, including, but not limited to, dangerous fireworks, safe and sane fireworks, agricultural and wildlife fireworks, and emergency signaling devices, as defined. That law defines "agricultural and wildlife fireworks" as fireworks designed and intended by the manufacturer to be used to prevent damage to crops or unwanted occupancy of areas by animals or birds through the employment of sound or light or both. That law makes it unlawful for a person to use or discharge an agricultural and wildlife firework without first securing a permit from the State Fire Marshal.

This bill would additionally make it unlawful for a person to possess an agricultural and wildlife firework without first securing a permit from the State Fire Marshal. The bill would also make it unlawful to possess with the intent to use, or to use, an agricultural and wildlife firework contrary to its intended use. By creating a new crime, the bill would impose a state-mandated local program.

(2) That law defines an “emergency signaling device” as a pyrotechnic device designed and intended by the manufacturer to be used in a manner that provides a reasonable degree of safety to the user and does not create a fire hazard when used according to the label of instructions. That law makes it unlawful for a person to sell, use, or discharge an emergency signaling device not registered by the State Fire Marshal.

This bill would additionally make it unlawful for a person to possess an emergency signaling device not registered by the State Fire Marshal. By creating a new crime, the bill would impose a state-mandated local program.

(3) That law requires the State Fire Marshal to adopt regulations relating to fireworks as may be necessary for the protection of life and property, and requires the State Fire Marshal to appoint deputies and employees as may be required to carry out the provisions of that law. That law provides that the State Fire Marshal, his or her salaried deputies, or a chief of a fire department, or his or her authorized representatives, a fire protection agency, or any other public agency authorized by statute to enforce the State Fire Marshal’s regulations, may seize any fireworks, as described, and may charge a person whose fireworks are seized with specified costs of transporting, storing, and handling the seized fireworks. That law also makes it unlawful for a person to, among other matters, transport fireworks unless those fireworks have been classified and registered by the State Fire Marshal.

This bill would permit the State Fire Marshal to appoint arson bomb investigators and employees as may be required to carry out the provisions of that law. The bill would also make it unlawful for a person to possess a specified amount of dangerous fireworks, and upon conviction, is guilty of a public offense subject to a specified fine or by imprisonment in the county jail for not more than one year, or both. By creating a new crime, the bill would impose a state-mandated local program. *The bill would require the State Fire Marshal, on or before July 1, 2008, to identify and evaluate specified data relating to fireworks. The bill would require the State Fire Marshal, in conjunction with the Attorney General, to send notices regarding unauthorized shipments of fireworks in California, as specified.*

The bill would create the State Fire Marshal Fireworks Enforcement and Disposal Fund. The bill would provide that ~~75%~~ 65% of the penalty imposed by these provisions shall be deposited in the fund for use by the State Fire Marshal, upon appropriation by the Legislature, to regulate

~~the fireworks industry~~ enforce, prosecute, dispose of, and manage dangerous fireworks and to educate public safety agencies in the proper handling and management of dangerous fireworks. The bill would also provide that ~~25%~~ 35% of the penalty will remain with the ~~local fire protection~~ public safety agency for ~~administrative~~ specified expenses. The bill would require the county treasurer in the county where the offense was committed; to forward those penalties as specified in these provisions. By imposing a higher level of service on a local agency, the bill would impose a state-mandated local program.

The bill would require the Office of the State Fire Marshal, consulting with public safety agencies and other stakeholders, to develop a model ordinance that permits local jurisdictions to adopt a streamlined enforcement and administrative fine procedures related to the possession of fireworks, as specified.

The bill would further require the State Fire Marshal, pursuant to the requirements and procedures established by the Office of Administrative Law, to establish regulations to impose a fee, ~~not to exceed \$0.03 per dollar,~~ for every dollar of safe and sane fireworks sold in the state, as specified. The bill would provide that these ~~regulatory~~ fees shall be deposited in the State Fire Marshal Fireworks Enforcement and Disposal Fund and may be appropriated by the State Fire Marshal without regard to fiscal-year years. By creating a continuously appropriated fund for the ~~regulatory~~ fees established by the State Fire Marshal, the bill would make an appropriation. *By authorizing a fee on the sale of safe and sane fireworks for exclusive use in connection with programs for dangerous fireworks, this bill would result in a change in state taxes for the purpose of increasing state revenues 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.*

(4) Existing law prohibits a driver of a commercial motor vehicle from operating a commercial motor vehicle for one year if the driver is convicted of a first violation of specified vehicle-related offenses or convicted of other specified crimes.

This bill would require the Department of Motor Vehicles, in conjunction with the State Fire Marshal, to develop regulations and procedures to temporarily suspend the commercial motor vehicle license of a person who is operating a commercial motor vehicle while transporting dangerous fireworks having a gross weight of 10,000 pounds or more. The bill would also prohibit a driver of a commercial motor vehicle from operating a commercial motor vehicle for 3 years

if the driver is convicted of transporting dangerous fireworks having a gross weight of 10,000 pounds or more.

(5) This bill would also make various technical, nonsubstantive changes to these provisions.

(6) 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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: ~~majority~~^{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. Section 12551 of the Health and Safety Code is
2 amended to read:

3 12551. (a) The State Fire Marshal shall appoint deputies and
4 employees as may be required to carry out the provisions of this
5 part.

6 (b) The State Fire Marshal may appoint arson bomb investigators
7 and employees as may be required to carry out the provisions of
8 this part.

9 SEC. 2. Section 12552 of the Health and Safety Code is
10 amended to read:

11 12552. The State Fire Marshal shall adopt regulations relating
12 to fireworks as may be necessary for the protection of life and
13 property not inconsistent with the provisions of this part. These
14 regulations shall include, but ~~not be~~ *are not* limited to, provisions
15 for the following:

16 (a) Granting of licenses and permits for the manufacture,
17 wholesale, import, export, and sale of all classes of fireworks.

18 (b) Classification of fireworks and pyrotechnic devices.

19 (c) Registration of employees of licensees.

20 (d) Licenses and permits required for presentation of public
21 displays.

1 (e) Granting of licenses and permits for research or
2 experimentation with experimental or model rockets and missiles.

3 (f) Investigation, examination, and licensing of pyrotechnic
4 operators of all classes.

5 (g) Registration of emergency signaling devices and the
6 classification and use of exempt fireworks.

7 (h) Transportation of all classifications of fireworks, model
8 rockets, emergency signaling devices, and exempt fireworks.

9 (i) Fees for every dollar of safe and sane fireworks sold in this
10 state as described in Section 12727.

11 *SEC. 3. Section 12556 is added to the Health and Safety Code,*
12 *to read:*

13 *12556. On or before July 1, 2008, the State Fire Marshal shall*
14 *identify and evaluate methods to capture more detailed data*
15 *relating to fires, damages, and injuries caused by both dangerous*
16 *fireworks and safe and sane fireworks. These evaluation methods*
17 *shall include a cost analysis related to capturing and reporting*
18 *the data.*

19 *SEC. 4. Section 12557 is added to the Health and Safety Code,*
20 *to read:*

21 *12557. The Office of the State Fire Marshal shall consult with*
22 *public safety agencies and other stakeholders as deemed necessary*
23 *by the State Fire Marshal and develop a model ordinance that*
24 *permits local jurisdictions to adopt a streamlined enforcement and*
25 *administrative fine procedures related to the possession of*
26 *fireworks. These procedures shall be limited to civil fines and as*
27 *authorized pursuant to Section 53069.4 of the Government Code.*
28 *The model ordinance shall include provisions for reimbursing the*
29 *Office of the State Fire Marshal for the costs associated with the*
30 *disposal of seized fireworks.*

31 ~~SEC. 3.~~

32 *SEC. 5. Section 12678 of the Health and Safety Code is*
33 *amended to read:*

34 12678. (a) It is unlawful for a person to possess, use, or
35 discharge agricultural and wildlife fireworks without first securing
36 a permit as provided in this part.

37 (b) It is unlawful for a person to possess with the intent to use,
38 or to use, agricultural and wildlife fireworks contrary to the
39 fireworks intended use.

1 ~~SEC. 4.~~

2 *SEC. 6.* Section 12683 of the Health and Safety Code is
3 amended to read:

4 12683. It is unlawful for a person to possess, sell, use, or
5 discharge an emergency signaling device not registered by the
6 State Fire Marshal.

7 ~~SEC. 5.~~

8 *SEC. 7.* Section 12700 of the Health and Safety Code is
9 amended to read:

10 12700. (a) Except as provided in Section 12702 and
11 subdivision (b), a person who violates any provision of this part,
12 or any regulations issued pursuant to this part, is guilty of a
13 misdemeanor, and upon conviction shall be punished by a fine of
14 not less than five hundred dollars (\$500) or more than one thousand
15 dollars (\$1,000), or by imprisonment in the county jail for not
16 exceeding one year, or by both that fine and imprisonment.

17 (b) A person who violates any provision of this part, or any
18 regulations issued pursuant to this part, by possessing dangerous
19 fireworks shall be subject to the following:

20 (1) A person who possesses a gross weight, including packaging,
21 of less than 25 pounds of unaltered dangerous fireworks, as defined
22 in Section 12505, is guilty of a public offense, and upon conviction
23 shall be punished by a fine of not less than five hundred dollars
24 (\$500) or more than one thousand dollars (\$1,000), or by
25 imprisonment in the county jail for not exceeding one year, or both
26 that fine and imprisonment.

27 (2) A person who possesses a gross weight, including packaging,
28 of not less than 25 pounds or more than 1,000 pounds of unaltered
29 dangerous fireworks, as defined in Section 12505, is guilty of a
30 public offense, and upon conviction shall be punished by a fine of
31 not less than one thousand dollars (\$1,000) or more than five
32 thousand dollars (\$5,000), or by imprisonment in the county jail
33 for not exceeding one year, or both that fine and imprisonment.

34 (3) A person who possesses a gross weight, including packaging,
35 of not less than 1,000 pounds or more than 10,000 pounds of
36 unaltered dangerous fireworks, as defined in Section 12505, is
37 guilty of a public offense, and upon conviction shall be punished
38 by a fine of not less than five thousand dollars (\$5,000) or more
39 than ten thousand dollars (\$10,000), and by imprisonment in the
40 county jail for not exceeding one year.

1 (4) A person who possesses a gross weight, including packaging,
2 of more than 10,000 pounds of unaltered dangerous fireworks, as
3 defined in Section 12505, is guilty of a public offense, and upon
4 conviction shall be punished by a fine of not less than ten thousand
5 dollars (\$10,000) or more than fifty thousand dollars (\$50,000),
6 and by imprisonment in the county jail for not exceeding one year.

7 (c) Subdivision (b) shall not apply to a person who holds and
8 is operating within the scope of a valid license as described in
9 Section 12516 or valid permit as described in Section 12522.

10 ~~SEC. 6.~~

11 *SEC. 8.* Section 12702 of the Health and Safety Code is
12 amended to read:

13 12702. Notwithstanding the provisions of Section 12700:

14 (a) A person who violates this part by selling, giving, or
15 delivering any dangerous fireworks to any person under 18 years
16 of age is guilty of a misdemeanor and upon a first conviction shall
17 be punished as prescribed in Section 12700.

18 (b) Upon a second or subsequent conviction of the offense, the
19 person shall be punished by the penalties of the applicable fine
20 described in subdivision (b) of Section 12700, an additional fine
21 of five thousand dollars (\$5,000), and by imprisonment in the
22 county jail for one year. The person shall not be granted probation
23 and the execution of the sentence imposed upon the person shall
24 not be suspended by the court.

25 ~~SEC. 7.~~

26 *SEC. 9.* Section 12703 is added to the Health and Safety Code,
27 to read:

28 12703. (a) The State Fire Marshal shall, in conjunction with
29 the Department of Motor Vehicles, develop regulations and
30 procedures to temporarily suspend the commercial motor vehicle
31 license of a person who is operating a commercial motor vehicle
32 while transporting unaltered dangerous fireworks, as defined in
33 Section 12505, having a gross weight, including packaging, of
34 10,000 pounds or more.

35 (b) A driver of a commercial motor vehicle shall not operate a
36 commercial motor vehicle for three years if the driver is convicted
37 of transporting unaltered dangerous fireworks, as defined in Section
38 12505, having a gross weight, including packaging, of 10,000
39 pounds or more, as described in Section 15301 of the Vehicle
40 Code.

1 (c) This section shall not apply to a person who holds and is
2 operating within the scope of a valid license as described in Section
3 12516 or valid permit as described in Section 12522.

4 *SEC. 10. Section 12704 is added to the Health and Safety Code,*
5 *to read:*

6 *12704. The State Fire Marshal, at least once a year and in*
7 *consultation with the Attorney General, shall serve notice to any*
8 *individual or business known to supply fireworks that any*
9 *unauthorized shipments of fireworks into California will result in*
10 *an immediate report to federal authorities with a request for any*
11 *relevant federal prosecution.*

12 ~~SEC. 8.~~

13 *SEC. 11. Section ~~12704~~ 12706 is added to the Health and Safety*
14 *Code, to read:*

15 ~~12704.~~

16 *12706. Notwithstanding Section 1463 of the Penal Code, all*
17 *finances and forfeitures imposed by or collected in any court of this*
18 *state, as a result of citations issued by ~~the State Fire Marshal or~~*
19 *~~salaries deputy state fire marshals employed by the State of~~*
20 *California a public safety agency, for any violation of subdivision*
21 *(b) of Section 12700 or of any regulation adopted pursuant to*
22 *subdivision (b) of Section 12700, shall be deposited, as soon as*
23 *practicable after the receipt of the fine or forfeiture, with the county*
24 *treasurer of the county in which the court is situated. Amounts*
25 *deposited pursuant to this section shall be paid at least once a*
26 *month as follows:*

27 (a) ~~Seventy-five~~ *Sixty-five* percent to the Treasurer, by warrant
28 of the county auditor drawn upon the requisition of the clerk or
29 judge of the court, for deposit in the State Fire Marshal Fireworks
30 Enforcement and Disposal Fund, as described in Section 12728,
31 on order of the Controller. At the time of the transmittal, the county
32 auditor shall forward to the Controller, on the form or forms
33 prescribed by the Controller, a record of the imposition, collection,
34 and payments of the fines or forfeitures.

35 (b) ~~Twenty-five~~ *Thirty-five* percent to the local ~~fire protection~~
36 *public safety* agency in the county in which the offense was
37 committed to reimburse the local ~~fire protection~~ *public safety*
38 agency for ~~administrative expenses~~ *expenses, including, but not*
39 *limited to, the costs for handling, processing, photographing, and*
40 *storing seized dangerous fireworks.*

1 ~~SEC. 9.~~

2 ~~SEC. 12.~~ Section ~~12705~~ 12707 is added to the Health and Safety
3 Code, to read:

4 ~~12705.~~

5 12707. (a) If a person charged with a violation of this part is
6 released pursuant to Section 853.6 of the Penal Code or otherwise
7 released, and the magistrate fixes an amount of bail that in his or
8 her judgment, in accordance with Section 1275 of the Penal Code,
9 is reasonable and sufficient for the appearance of the defendant,
10 the amount of that bail equals or exceeds the minimum fine
11 described in Section 12700, and the defendant pays the amount of
12 that bail, the magistrate may use the procedure described in
13 subdivision (b).

14 (b) At the time the case is called for arraignment before the
15 magistrate, if the defendant does not appear, either in person or
16 by counsel, the magistrate may declare the bail forfeited, and may,
17 in his or her discretion, order that no further proceedings shall be
18 had in the case.

19 (c) Upon the making of the order that no further proceedings
20 be had, all sums deposited as bail shall immediately be paid into
21 the county treasury for distribution pursuant to Section ~~12704~~
22 12706.

23 ~~SEC. 10.~~

24 ~~SEC. 13.~~ Section 12726 of the Health and Safety Code is
25 amended to read:

26 12726. (a) The dangerous fireworks seized pursuant to this
27 part shall be disposed of by the State Fire Marshal in the manner
28 prescribed by the State Fire Marshal at any time after the final
29 determination of proceedings under Section 12724, or upon final
30 termination of proceedings under Section 12593, whichever is
31 later. If no proceedings are commenced pursuant to Section 12724,
32 the State Fire Marshal may dispose of the fireworks after all of the
33 following requirements are satisfied:

34 (1) A random sampling of the dangerous fireworks has been
35 taken, as defined by regulations adopted by the State Fire Marshal
36 pursuant to Section 12552.

37 (2) The analysis of the random sampling has been completed.

38 (3) Photographs have been taken of the dangerous fireworks to
39 be destroyed.

1 (4) The State Fire Marshal has given written approval for the
 2 destruction of the dangerous fireworks. This approval shall specify
 3 the total weight of the dangerous fireworks seized, the total weight
 4 of the dangerous fireworks to be destroyed, and the total weight
 5 of the dangerous fireworks not to be destroyed.

6 (b) To carry out the purposes of this section, the State Fire
 7 Marshal shall acquire and use statewide mobile dangerous
 8 fireworks destruction units to collect and destroy seized dangerous
 9 fireworks from local and state agencies.

10 (c) *If dangerous fireworks are seized pursuant to a local*
 11 *ordinance that provides for administrative fines or penalties and*
 12 *these fines or penalties are collected, the local government entity*
 13 *collecting the fines or penalties shall forward 65 percent of the*
 14 *collected moneys to the Controller for deposit in the State Fire*
 15 *Marshal Fireworks Enforcement and Disposal Fund, as described*
 16 *in Section 12728.*

17 ~~SEC. 11.~~

18 *SEC. 14.* Section 12727 is added to the Health and Safety Code,
 19 to read:

20 12727. (a) The State Fire Marshal shall establish regulations
 21 ~~to assess a fee, not to exceed three cents (\$0.03) per dollar, for~~
 22 ~~every dollar of safe and sane fireworks sold in this state to be~~
 23 ~~deposited in the State Fire Marshal Fireworks Enforcement and~~
 24 ~~Disposal Fund described in Section 12728.~~ *pursuant to the*
 25 *requirements and procedures established with the Office of*
 26 *Administrative Law to assess a fee for every dollar of safe and*
 27 *sane fireworks sold in California to be deposited in the State Fire*
 28 *Marshal Fireworks Enforcement and Disposal Fund.*

29 (b) In determining the appropriate amount of the fees described
 30 in subdivision (a), the State Fire Marshal shall consult with the
 31 fireworks industry.

32 ~~SEC. 12.~~

33 *SEC. 15.* Section 12728 is added to the Health and Safety Code,
 34 to read:

35 12728. (a) The State Fire Marshal Fireworks Enforcement and
 36 Disposal Fund is hereby established in the State Treasury.

37 (b) All of the moneys collected pursuant to Section ~~12704~~ 12706
 38 shall be deposited in the fund and shall be available, upon
 39 appropriation by the Legislature, to the State Fire Marshal for the
 40 exclusive use in statewide programs for the enforcement,

1 prosecution related to, disposal, and management of seized
 2 dangerous fireworks, and for the education of ~~local fire departments~~
 3 ~~and fire protection~~ *public safety* agencies in the proper handling
 4 and management of dangerous fireworks.

5 (c) All of the moneys collected pursuant to Section 12727 shall
 6 be deposited in the fund and is hereby appropriated, without regard
 7 to fiscal years, to the State Fire Marshal ~~to regulate the fireworks~~
 8 ~~industry~~. *for the exclusive use in statewide programs for the*
 9 *enforcement, prosecution related to, disposal, and management*
 10 *of seized dangerous fireworks, and for the education of public*
 11 *safety agencies, local fire departments, and fire protection agencies*
 12 *in the proper handling and management of dangerous fireworks.*

13 ~~SEC. 13.~~

14 *SEC. 16.* Section 15301 is added to the Vehicle Code, to read:

15 15301. The Department of Motor Vehicles, in conjunction with
 16 the State Fire Marshal, shall develop regulations and procedures
 17 to temporarily suspend the commercial motor vehicle license of a
 18 person who is operating a commercial motor vehicle while
 19 transporting dangerous fireworks having a gross weight of 10,000
 20 pounds or more. A driver of a commercial motor vehicle shall not
 21 operate a commercial motor vehicle for three years if the driver is
 22 convicted of transporting dangerous fireworks having a gross
 23 weight of 10,000 pounds or more.

24 ~~SEC. 14.~~

25 *SEC. 17.* No reimbursement is required by this act pursuant to
 26 Section 6 of Article XIII B of the California Constitution for certain
 27 costs that may be incurred by a local agency or school district
 28 because, in that regard, this act creates a new crime or infraction,
 29 eliminates a crime or infraction, or changes the penalty for a crime
 30 or infraction, within the meaning of Section 17556 of the
 31 Government Code, or changes the definition of a crime within the
 32 meaning of Section 6 of Article XIII B of the California
 33 Constitution.

34 However, if the Commission on State Mandates determines that
 35 this act contains other costs mandated by the state, reimbursement
 36 to local agencies and school districts for those costs shall be made
 37 pursuant to Part 7 (commencing with Section 17500) of Division
 38 4 of Title 2 of the Government Code.

O