

AMENDED IN SENATE APRIL 16, 2007

AMENDED IN SENATE APRIL 9, 2007

**SENATE BILL**

**No. 839**

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**Introduced by Senator Calderon**

February 23, 2007

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An act to amend Sections 12551, 12552, 12678, ~~12683~~, 12700, 12702, and 12726 of, and to add Sections 12556, 12557, 12703, 12704, 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 *and punishable as an infraction* for a person to *either* possess an agricultural and wildlife firework without first securing a permit from the State Fire Marshal. ~~The bill would also make it unlawful to~~ *or* 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)~~

(2) 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~~ *punishable by a fine or by imprisonment in the county jail for not more than one year, or both, as specified*. 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 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 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 35% of the penalty will remain with the public safety agency for 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 for every dollar of safe and sane fireworks sold in the state, as specified. The bill would provide that these 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 years. By creating a continuously appropriated fund for the 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)~~

(3) 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)~~

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

~~(6)~~

(5) 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:  $\frac{2}{3}$ . Appropriation: yes. Fiscal committee: yes.  
 State-mandated local program: yes.

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

1 SECTION 1. 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 are not limited to, provisions for the  
 15 following:

- 1 (a) Granting of licenses and permits for the manufacture,
  - 2 wholesale, import, export, and sale of all classes of fireworks.
  - 3 (b) Classification of fireworks and pyrotechnic devices.
  - 4 (c) Registration of employees of licensees.
  - 5 (d) Licenses and permits required for presentation of public
  - 6 displays.
  - 7 (e) Granting of licenses and permits for research or
  - 8 experimentation with experimental or model rockets and missiles.
  - 9 (f) Investigation, examination, and licensing of pyrotechnic
  - 10 operators of all classes.
  - 11 (g) Registration of emergency signaling devices and the
  - 12 classification and use of exempt fireworks.
  - 13 (h) Transportation of all classifications of fireworks, model
  - 14 rockets, emergency signaling devices, and exempt fireworks.
  - 15 (i) Fees for every dollar of safe and sane fireworks sold in this
  - 16 state as described in Section 12727.
- 17 SEC. 3. Section 12556 is added to the Health and Safety Code,
- 18 to read:
- 19 12556. On or before July 1, 2008, the State Fire Marshal shall
- 20 identify and evaluate methods to capture more detailed data relating
- 21 to fires, damages, and injuries caused by both dangerous fireworks
- 22 and safe and sane fireworks. These evaluation methods shall
- 23 include a cost analysis related to capturing and reporting the data.
- 24 SEC. 4. Section 12557 is added to the Health and Safety Code,
- 25 to read:
- 26 12557. The Office of the State Fire Marshal shall consult with
- 27 public safety agencies and other stakeholders as deemed necessary
- 28 by the State Fire Marshal and develop a model ordinance that
- 29 permits local jurisdictions to adopt a streamlined enforcement and
- 30 administrative fine procedures related to the possession of
- 31 fireworks. These procedures shall be limited to civil fines and as
- 32 authorized pursuant to Section 53069.4 of the Government Code.
- 33 The model ordinance shall include provisions for reimbursing the
- 34 Office of the State Fire Marshal for the costs associated with the
- 35 disposal of seized fireworks.
- 36 SEC. 5. Section 12678 of the Health and Safety Code is
- 37 amended to read:
- 38 12678. ~~(a) It is unlawful for a person to possess,~~ It is unlawful
- 39 and, notwithstanding Section 12700, punishable as an infraction
- 40 for a person to do either of the following:

1 (a) Possess, use, or discharge agricultural and wildlife fireworks  
2 without first securing a permit as provided in this part.

3 (b) ~~It is unlawful for a person to possess~~ Possess ith the intent  
4 to use, or to use, agricultural and wildlife fireworks contrary to  
5 the fireworks intended use.

6 ~~SEC. 6. Section 12683 of the Health and Safety Code is~~  
7 ~~amended to read:~~

8 ~~12683. It is unlawful for a person to possess, sell, use, or~~  
9 ~~discharge an emergency signaling device not registered by the~~  
10 ~~State Fire Marshal.~~

11 ~~SEC. 7.~~

12 ~~SEC. 6.~~ Section 12700 of the Health and Safety Code is  
13 amended to read:

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

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

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

34 (2) A person who possesses a gross weight, including packaging,  
35 of not less than 25 pounds or more than ~~1,000~~ 100 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 one thousand dollars (\$1,000) or more  
39 than five thousand dollars (\$5,000), ~~or by~~ *and by either*

1 imprisonment in the county jail for not exceeding one year, or ~~both~~  
2 ~~that fine and imprisonment~~ *imprisonment in the state prison.*

3 (3) A person who possesses a gross weight, including packaging,  
4 of not less than ~~1,000~~ 100 pounds or more than ~~10,000~~ 1,000  
5 pounds of unaltered dangerous fireworks, as defined in Section  
6 12505, is guilty of a public offense, and upon conviction shall be  
7 punished by a fine of not less than five thousand dollars (\$5,000)  
8 or more than ten thousand dollars (\$10,000), and by *either*  
9 imprisonment in the county jail for not exceeding one year *or*  
10 *imprisonment in the state prison.*

11 (4) A person who possesses a gross weight, including packaging,  
12 of more than ~~10,000~~ 1,000 pounds of unaltered dangerous  
13 fireworks, as defined in Section 12505, is guilty of a public offense,  
14 and upon conviction shall be punished by a fine of not less than  
15 ten thousand dollars (\$10,000) or more than fifty thousand dollars  
16 (\$50,000), and by *either* imprisonment in the county jail for not  
17 exceeding one year *or imprisonment in the state prison.*

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

21 ~~SEC. 8.~~

22 *SEC. 7.* Section 12702 of the Health and Safety Code is  
23 amended to read:

24 12702. Notwithstanding the provisions of Section 12700:

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

29 (b) Upon a second or subsequent conviction of the offense, the  
30 person shall be punished by the penalties of the applicable fine  
31 described in subdivision (b) of Section 12700, an additional fine  
32 of five thousand dollars (\$5,000), and by imprisonment in the  
33 county jail for one year. The person shall not be granted probation  
34 and the execution of the sentence imposed upon the person shall  
35 not be suspended by the court.

36 ~~SEC. 9.~~

37 *SEC. 8.* Section 12703 is added to the Health and Safety Code,  
38 to read:

39 12703. (a) The State Fire Marshal shall, in conjunction with  
40 the Department of Motor Vehicles, develop regulations and

1 procedures to temporarily suspend the commercial motor vehicle  
2 license of a person who is operating a commercial motor vehicle  
3 while transporting unaltered dangerous fireworks, as defined in  
4 Section 12505, having a gross weight, including packaging, of  
5 10,000 pounds or more.

6 (b) A driver of a commercial motor vehicle shall not operate a  
7 commercial motor vehicle for three years if the driver is convicted  
8 of transporting unaltered dangerous fireworks, as defined in Section  
9 12505, having a gross weight, including packaging, of 10,000  
10 pounds or more, as described in Section 15301 of the Vehicle  
11 Code.

12 (c) This section shall not apply to a person who holds and is  
13 operating within the scope of a valid license as described in Section  
14 12516 or valid permit as described in Section 12522.

15 ~~SEC. 10.~~

16 *SEC. 9.* Section 12704 is added to the Health and Safety Code,  
17 to read:

18 12704. The State Fire Marshal, at least once a year and in  
19 consultation with the Attorney General, shall serve notice to any  
20 individual or business known to supply fireworks that any  
21 unauthorized shipments of fireworks into California will result in  
22 an immediate report to federal authorities with a request for any  
23 relevant federal prosecution.

24 ~~SEC. 11.~~

25 *SEC. 10.* Section 12706 is added to the Health and Safety Code,  
26 to read:

27 12706. Notwithstanding Section 1463 of the Penal Code, all  
28 fines and forfeitures imposed by or collected in any court of this  
29 state, as a result of citations issued by a public safety agency, for  
30 any violation of subdivision (b) of Section 12700 or of any  
31 regulation adopted pursuant to subdivision (b) of Section 12700,  
32 shall be deposited, as soon as practicable after the receipt of the  
33 fine or forfeiture, with the county treasurer of the county in which  
34 the court is situated. Amounts deposited pursuant to this section  
35 shall be paid at least once a month as follows:

36 (a) Sixty-five percent to the Treasurer, by warrant of the county  
37 auditor drawn upon the requisition of the clerk or judge of the  
38 court, for deposit in the State Fire Marshal Fireworks Enforcement  
39 and Disposal Fund, as described in Section 12728, on order of the  
40 Controller. At the time of the transmittal, the county auditor shall

1 forward to the Controller, on the form or forms prescribed by the  
2 Controller, a record of the imposition, collection, and payments  
3 of the fines or forfeitures.

4 (b) Thirty-five percent to the local public safety agency in the  
5 county in which the offense was committed to reimburse the local  
6 public safety agency for expenses, including, but not limited to,  
7 the costs for handling, processing, photographing, and storing  
8 seized dangerous fireworks.

9 ~~SEC. 12.~~

10 *SEC. 11.* Section 12707 is added to the Health and Safety Code,  
11 to read:

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

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

26 (c) Upon the making of the order that no further proceedings  
27 be had, all sums deposited as bail shall immediately be paid into  
28 the county treasury for distribution pursuant to Section 12706.

29 ~~SEC. 13.~~

30 *SEC. 12.* Section 12726 of the Health and Safety Code is  
31 amended to read:

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

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

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

5 (3) Photographs have been taken of the dangerous fireworks to  
 6 be destroyed.

7 (4) The State Fire Marshal has given written approval for the  
 8 destruction of the dangerous fireworks. This approval shall specify  
 9 the total weight of the dangerous fireworks seized, the total weight  
 10 of the dangerous fireworks to be destroyed, and the total weight  
 11 of the dangerous fireworks not to be destroyed.

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

16 (c) If dangerous fireworks are seized pursuant to a local  
 17 ordinance that provides for administrative fines or penalties and  
 18 these fines or penalties are collected, the local government entity  
 19 collecting the fines or penalties shall forward 65 percent of the  
 20 collected moneys to the Controller for deposit in the State Fire  
 21 Marshal Fireworks Enforcement and Disposal Fund, as described  
 22 in Section 12728.

23 ~~SEC. 14.~~

24 *SEC. 13.* Section 12727 is added to the Health and Safety Code,  
 25 to read:

26 12727. (a) The State Fire Marshal shall establish regulations  
 27 pursuant to the requirements and procedures established with the  
 28 Office of Administrative Law to assess a fee for every dollar of  
 29 safe and sane fireworks sold in California to be deposited in the  
 30 State Fire Marshal Fireworks Enforcement and Disposal Fund.

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

34 ~~SEC. 15.~~

35 *SEC. 14.* Section 12728 is added to the Health and Safety Code,  
 36 to read:

37 12728. (a) The State Fire Marshal Fireworks Enforcement and  
 38 Disposal Fund is hereby established in the State Treasury.

39 (b) All of the moneys collected pursuant to Section 12706 shall  
 40 be deposited in the fund and shall be available, upon appropriation

1 by the Legislature, to the State Fire Marshal for the exclusive use  
2 in statewide programs for the enforcement, prosecution related to,  
3 disposal, and management of seized dangerous fireworks, and for  
4 the education of public safety agencies in the proper handling and  
5 management of dangerous fireworks.

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

14 ~~SEC. 16.~~

15 *SEC. 15.* Section 15301 is added to the Vehicle Code, to read:

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

25 ~~SEC. 17.~~

26 *SEC. 16.* No reimbursement is required by this act pursuant to  
27 Section 6 of Article XIII B of the California Constitution for certain  
28 costs that may be incurred by a local agency or school district  
29 because, in that regard, this act creates a new crime or infraction,  
30 eliminates a crime or infraction, or changes the penalty for a crime  
31 or infraction, within the meaning of Section 17556 of the  
32 Government Code, or changes the definition of a crime within the  
33 meaning of Section 6 of Article XIII B of the California  
34 Constitution.

35 However, if the Commission on State Mandates determines that  
36 this act contains other costs mandated by the state, reimbursement  
37 to local agencies and school districts for those costs shall be made

- 1 pursuant to Part 7 (commencing with Section 17500) of Division
- 2 4 of Title 2 of the Government Code.

O