

AMENDED IN SENATE APRIL 19, 2007

AMENDED IN SENATE APRIL 16, 2007

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~~, 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 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)~~

~~(1) 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 punishable by a fine or by imprisonment, 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.

(3)

(2) 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.

(4)

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

(5)

(4) 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: 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:

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.

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

24 (f) Investigation, examination, and licensing of pyrotechnic
25 operators of all classes.

1 (g) Registration of emergency signaling devices and the
2 classification and use of exempt fireworks.

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

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

7 SEC. 3. Section 12556 is added to the Health and Safety Code,
8 to read:

9 12556. On or before July 1, 2008, the State Fire Marshal shall
10 identify and evaluate methods to capture more detailed data relating
11 to fires, damages, and injuries caused by both dangerous fireworks
12 and safe and sane fireworks. These evaluation methods shall
13 include a cost analysis related to capturing and reporting the data.

14 SEC. 4. Section 12557 is added to the Health and Safety Code,
15 to read:

16 12557. The Office of the State Fire Marshal shall consult with
17 public safety agencies and other stakeholders as deemed necessary
18 by the State Fire Marshal and develop a model ordinance that
19 permits local jurisdictions to adopt a streamlined enforcement and
20 administrative fine procedures related to the possession of
21 fireworks. These procedures shall be limited to civil fines and as
22 authorized pursuant to Section 53069.4 of the Government Code.
23 The model ordinance shall include provisions for reimbursing the
24 Office of the State Fire Marshal for the costs associated with the
25 disposal of seized fireworks.

26 ~~SEC. 5. Section 12678 of the Health and Safety Code is~~
27 ~~amended to read:~~

28 ~~12678. It is unlawful and, notwithstanding Section 12700,~~
29 ~~punishable as an infraction for a person to do either of the~~
30 ~~following:~~

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

33 ~~(b) Possess ith the intent to use, or to use, agricultural and~~
34 ~~wildlife fireworks contrary to the fireworks intended use.~~

35 ~~SEC. 6.~~

36 SEC. 5. Section 12700 of the Health and Safety Code is
37 amended to read:

38 12700. (a) Except as provided in Section 12702 and
39 subdivision (b), a person who violates any provision of this part,
40 or any regulations issued pursuant to this part, is guilty of a

1 misdemeanor, and upon conviction shall be punished by a fine of
2 not less than five hundred dollars (\$500) or more than one thousand
3 dollars (\$1,000), or by imprisonment in the county jail for not
4 exceeding one year, or by both that fine and imprisonment.

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

8 (1) A person who possesses a gross weight, including packaging,
9 of less than 25 pounds of unaltered dangerous fireworks, as defined
10 in Section 12505, is guilty of a public offense, and upon conviction
11 shall be punished by a fine of not less than five hundred dollars
12 (\$500) or more than one thousand dollars (\$1,000), or by
13 imprisonment in the county jail for not exceeding one year, or both
14 that fine and imprisonment. Upon a second or subsequent
15 conviction, a person shall be punished by a fine of not less than
16 one thousand dollars (\$1,000) or by imprisonment in ~~the a~~ county
17 jail not exceeding one year ~~or by imprisonment in the state prison~~
18 *or by both that fine and imprisonment.*

19 (2) A person who possesses a gross weight, including packaging,
20 of not less than 25 pounds or more than 100 pounds of unaltered
21 dangerous fireworks, as defined in Section 12505, is guilty of a
22 public offense, and upon conviction shall be punished by a fine of
23 not less than one thousand dollars (\$1,000) or more than five
24 thousand dollars (\$5,000), and by ~~either~~ imprisonment in ~~the a~~
25 county jail for not exceeding one year, ~~or imprisonment in the state~~
26 ~~prison.~~

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

35 (4) A person who possesses a gross weight, including packaging,
36 of more than ~~1,000~~ *5,000* pounds of unaltered dangerous fireworks,
37 as defined in Section 12505, is guilty of a public offense, and upon
38 conviction shall be punished by a fine of not less than ten thousand
39 dollars (\$10,000) or more than fifty thousand dollars (\$50,000),

1 and by either imprisonment in the a county jail for not exceeding
2 one year or imprisonment in the state prison.

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

6 ~~SEC. 7.~~

7 SEC. 6. Section 12702 of the Health and Safety Code is
8 amended to read:

9 12702. Notwithstanding the provisions of Section 12700:

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

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

22 ~~SEC. 8.~~

23 SEC. 7. Section 12703 is added to the Health and Safety Code,
24 to read:

25 12703. (a) The State Fire Marshal shall, in conjunction with
26 the Department of Motor Vehicles, develop regulations and
27 procedures to temporarily suspend the commercial motor vehicle
28 license of a person who is operating a commercial motor vehicle
29 while transporting unaltered dangerous fireworks, as defined in
30 Section 12505, having a gross weight, including packaging, of
31 10,000 pounds or more.

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

38 (c) This section shall not apply to a person who holds and is
39 operating within the scope of a valid license as described in Section
40 12516 or valid permit as described in Section 12522.

1 ~~SEC. 9.~~

2 *SEC. 8.* Section 12704 is added to the Health and Safety Code,
3 to read:

4 12704. The State Fire Marshal, at least once a year and in
5 consultation with the Attorney General, shall serve notice to any
6 individual or business known to supply fireworks that any
7 unauthorized shipments of fireworks into California will result in
8 an immediate report to federal authorities with a request for any
9 relevant federal prosecution.

10 ~~SEC. 10.~~

11 *SEC. 9.* Section 12706 is added to the Health and Safety Code,
12 to read:

13 12706. Notwithstanding Section 1463 of the Penal Code, all
14 fines and forfeitures imposed by or collected in any court of this
15 state, as a result of citations issued by a public safety agency, for
16 any violation of subdivision (b) of Section 12700 or of any
17 regulation adopted pursuant to subdivision (b) of Section 12700,
18 shall be deposited, as soon as practicable after the receipt of the
19 fine or forfeiture, with the county treasurer of the county in which
20 the court is situated. Amounts deposited pursuant to this section
21 shall be paid at least once a month as follows:

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

30 (b) Thirty-five percent to the local public safety agency in the
31 county in which the offense was committed to reimburse the local
32 public safety agency for expenses, including, but not limited to,
33 the costs for handling, processing, photographing, and storing
34 seized dangerous fireworks.

35 ~~SEC. 11.~~

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

38 12707. (a) If a person charged with a violation of this part is
39 released pursuant to Section 853.6 of the Penal Code or otherwise
40 released, and the magistrate fixes an amount of bail that in his or

1 her judgment, in accordance with Section 1275 of the Penal Code,
2 is reasonable and sufficient for the appearance of the defendant,
3 the amount of that bail equals or exceeds the minimum fine
4 described in Section 12700, and the defendant pays the amount of
5 that bail, the magistrate may use the procedure described in
6 subdivision (b).

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

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

15 ~~SEC. 12.~~

16 *SEC. 11.* Section 12726 of the Health and Safety Code is
17 amended to read:

18 12726. (a) The dangerous fireworks seized pursuant to this
19 part shall be disposed of by the State Fire Marshal in the manner
20 prescribed by the State Fire Marshal at any time after the final
21 determination of proceedings under Section 12724, or upon final
22 termination of proceedings under Section 12593, whichever is
23 later. If no proceedings are commenced pursuant to Section 12724,
24 the State Fire Marshal may dispose of the fireworks after all of the
25 following requirements are satisfied:

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

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

30 (3) Photographs have been taken of the dangerous fireworks to
31 be destroyed.

32 (4) The State Fire Marshal has given written approval for the
33 destruction of the dangerous fireworks. This approval shall specify
34 the total weight of the dangerous fireworks seized, the total weight
35 of the dangerous fireworks to be destroyed, and the total weight
36 of the dangerous fireworks not to be destroyed.

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

1 (c) If dangerous fireworks are seized pursuant to a local
 2 ordinance that provides for administrative fines or penalties and
 3 these fines or penalties are collected, the local government entity
 4 collecting the fines or penalties shall forward 65 percent of the
 5 collected moneys to the Controller for deposit in the State Fire
 6 Marshal Fireworks Enforcement and Disposal Fund, as described
 7 in Section 12728.

8 ~~SEC. 13.~~

9 *SEC. 12.* Section 12727 is added to the Health and Safety Code,
 10 to read:

11 12727. (a) The State Fire Marshal shall establish regulations
 12 pursuant to the requirements and procedures established with the
 13 Office of Administrative Law to assess a fee for every dollar of
 14 safe and sane fireworks sold in California to be deposited in the
 15 State Fire Marshal Fireworks Enforcement and Disposal Fund.

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

19 ~~SEC. 14.~~

20 *SEC. 13.* Section 12728 is added to the Health and Safety Code,
 21 to read:

22 12728. (a) The State Fire Marshal Fireworks Enforcement and
 23 Disposal Fund is hereby established in the State Treasury.

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

31 (c) All of the moneys collected pursuant to Section 12727 shall
 32 be deposited in the fund and is hereby appropriated, without regard
 33 to fiscal years, to the State Fire Marshal for the exclusive use in
 34 statewide programs for the enforcement, prosecution related to,
 35 disposal, and management of seized dangerous fireworks, and for
 36 the education of public safety agencies, local fire departments, and
 37 fire protection agencies in the proper handling and management
 38 of dangerous fireworks.

39 ~~SEC. 15.~~

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

1 15301. The Department of Motor Vehicles, in conjunction with
2 the State Fire Marshal, shall develop regulations and procedures
3 to temporarily suspend the commercial motor vehicle license of a
4 person who is operating a commercial motor vehicle while
5 transporting dangerous fireworks having a gross weight of 10,000
6 pounds or more. A driver of a commercial motor vehicle shall not
7 operate a commercial motor vehicle for three years if the driver is
8 convicted of transporting dangerous fireworks having a gross
9 weight of 10,000 pounds or more.

10 ~~SEC. 16.~~

11 *SEC. 15.* No reimbursement is required by this act pursuant to
12 Section 6 of Article XIII B of the California Constitution for certain
13 costs that may be incurred by a local agency or school district
14 because, in that regard, this act creates a new crime or infraction,
15 eliminates a crime or infraction, or changes the penalty for a crime
16 or infraction, within the meaning of Section 17556 of the
17 Government Code, or changes the definition of a crime within the
18 meaning of Section 6 of Article XIII B of the California
19 Constitution.

20 However, if the Commission on State Mandates determines that
21 this act contains other costs mandated by the state, reimbursement
22 to local agencies and school districts for those costs shall be made
23 pursuant to Part 7 (commencing with Section 17500) of Division
24 4 of Title 2 of the Government Code.