

AMENDED IN SENATE MAY 1, 2007
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, 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) 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~~ to 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.

(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.

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

(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: $\frac{2}{3}$. 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.

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

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

6 12552. The State Fire Marshal shall adopt regulations relating
7 to fireworks as may be necessary for the protection of life and
8 property not inconsistent with the provisions of this part. These
9 regulations shall include, but are not limited to, provisions for the
10 following:

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

13 (b) Classification of fireworks and pyrotechnic devices.

14 (c) Registration of employees of licensees.

15 (d) Licenses and permits required for presentation of public
16 displays.

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

19 (f) Investigation, examination, and licensing of pyrotechnic
20 operators of all classes.

21 (g) Registration of emergency signaling devices and the
22 classification and use of exempt fireworks.

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

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

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

29 12556. On or before July 1, 2008, the State Fire Marshal shall
30 identify and evaluate methods to capture more detailed data relating
31 to fires, damages, and injuries caused by both dangerous fireworks
32 and safe and sane fireworks. These evaluation methods shall
33 include a cost analysis related to capturing and reporting the data.

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

36 12557. The Office of the State Fire Marshal shall consult with
37 public safety agencies and other stakeholders as deemed necessary
38 by the State Fire Marshal and develop a model ordinance that
39 permits local jurisdictions to adopt a streamlined enforcement and
40 administrative fine procedures related to the possession of

1 fireworks. These procedures shall be limited to civil fines and as
2 authorized pursuant to Section 53069.4 of the Government Code.
3 The model ordinance shall include provisions for reimbursing the
4 Office of the State Fire Marshal for the costs associated with the
5 disposal of seized fireworks.

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

8 12700. (a) Except as provided in Section 12702 and
9 subdivision (b), a person who violates any provision of this part,
10 or any regulations issued pursuant to this part, is guilty of a
11 misdemeanor, and upon conviction shall be punished by a fine of
12 not less than five hundred dollars (\$500) or more than one thousand
13 dollars (\$1,000), or by imprisonment in the county jail for not
14 exceeding one year, or by both that fine and imprisonment.

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

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

28 (2) A person who possesses a gross weight, including packaging,
29 of not less than 25 pounds or more than 100 pounds of unaltered
30 dangerous fireworks, as defined in Section 12505, is guilty of a
31 public offense, and upon conviction shall be punished by a fine of
32 not less than one thousand dollars (\$1,000) or more than five
33 thousand dollars (\$5,000), and by imprisonment in a county jail
34 for not exceeding one year.

35 (3) A person who possesses a gross weight, including packaging,
36 of not less than 100 pounds or more than 5,000 pounds of unaltered
37 dangerous fireworks, as defined in Section 12505, is guilty of a
38 public offense, and upon conviction shall be punished by a fine of
39 not less than five thousand dollars (\$5,000) or more than ten

1 thousand dollars (\$10,000), and by imprisonment in a county jail
2 for not exceeding one year or imprisonment in the state prison.

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

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

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

15 12702. Notwithstanding the provisions of Section 12700:

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

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

26 SEC. 7. 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. 8. 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. 9. Section 12706 is added to the Health and Safety Code,
13 to read:

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

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

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

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. 11.~~

16 *SEC. 10.* 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. 12.~~

9 *SEC. 11.* 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. 13.~~

20 *SEC. 12.* 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. 14.~~

40 *SEC. 13.* 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. 15.~~

11 *SEC. 14.* 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.

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CORRECTIONS:

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