

AMENDED IN SENATE MAY 10, 2007

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**

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**Introduced by Senator Calderon**

February 23, 2007

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An act to amend Sections 12551, 12552, 12700, 12702, and 12726 of, and to add Sections 12556, 12557, 12703, 12704, 12706, 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~~ *assess fees on all import and export, wholesale, and retail fireworks licensees in California*, 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 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:  $\frac{2}{3}$ -majority. 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:

1 12551. (a) The State Fire Marshal shall appoint deputies and  
2 employees as may be required to carry out the provisions of this  
3 part.

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

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

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

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

16 (b) Classification of fireworks and pyrotechnic devices.

17 (c) Registration of employees of licensees.

18 (d) Licenses and permits required for presentation of public  
19 displays.

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

22 (f) Investigation, examination, and licensing of pyrotechnic  
23 operators of all classes.

24 (g) Registration of emergency signaling devices and the  
25 classification and use of exempt fireworks.

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

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

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

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

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

39 12557. The Office of the State Fire Marshal shall consult with  
40 public safety agencies and other stakeholders as deemed necessary

1 by the State Fire Marshal and develop a model ordinance that  
2 permits local jurisdictions to adopt a streamlined enforcement and  
3 administrative fine procedures related to the possession of  
4 fireworks. These procedures shall be limited to civil fines and as  
5 authorized pursuant to Section 53069.4 of the Government Code.  
6 The model ordinance shall include provisions for reimbursing the  
7 Office of the State Fire Marshal for the costs associated with the  
8 disposal of seized fireworks.

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

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

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

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

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

38 (3) A person who possesses a gross weight, including packaging,  
39 of not less than 100 pounds or more than 5,000 pounds of unaltered  
40 dangerous fireworks, as defined in Section 12505, is guilty of a

1 public offense, and upon conviction shall be punished by a fine of  
2 not less than five thousand dollars (\$5,000) or more than ten  
3 thousand dollars (\$10,000), and by imprisonment in a county jail  
4 for not exceeding one year or imprisonment in the state prison.

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

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

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

17 12702. Notwithstanding the provisions of Section 12700:

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

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

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

30 12703. (a) The State Fire Marshal shall, in conjunction with  
31 the Department of Motor Vehicles, develop regulations and  
32 procedures to temporarily suspend the commercial motor vehicle  
33 license of a person who is operating a commercial motor vehicle  
34 while transporting unaltered dangerous fireworks, as defined in  
35 Section 12505, having a gross weight, including packaging, of  
36 10,000 pounds or more.

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

1 pounds or more, as described in Section 15301 of the Vehicle  
2 Code.

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

6 SEC. 8. Section 12704 is added to the Health and Safety Code,  
7 to read:

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

14 SEC. 9. Section 12706 is added to the Health and Safety Code,  
15 to read:

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

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

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

38 SEC. 10. Section 12726 of the Health and Safety Code is  
39 amended to read:

1 12726. (a) The dangerous fireworks seized pursuant to this  
2 part shall be disposed of by the State Fire Marshal in the manner  
3 prescribed by the State Fire Marshal at any time after the final  
4 determination of proceedings under Section 12724, or upon final  
5 termination of proceedings under Section 12593, whichever is  
6 later. If no proceedings are commenced pursuant to Section 12724,  
7 the State Fire Marshal may dispose of the fireworks after all of the  
8 following requirements are satisfied:

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

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

13 (3) Photographs have been taken of the dangerous fireworks to  
14 be destroyed.

15 (4) The State Fire Marshal has given written approval for the  
16 destruction of the dangerous fireworks. This approval shall specify  
17 the total weight of the dangerous fireworks seized, the total weight  
18 of the dangerous fireworks to be destroyed, and the total weight  
19 of the dangerous fireworks not to be destroyed.

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

24 (c) If dangerous fireworks are seized pursuant to a local  
25 ordinance that provides for administrative fines or penalties and  
26 these fines or penalties are collected, the local government entity  
27 collecting the fines or penalties shall forward 65 percent of the  
28 collected moneys to the Controller for deposit in the State Fire  
29 Marshal Fireworks Enforcement and Disposal Fund, as described  
30 in Section 12728.

31 SEC. 11. Section 12727 is added to the Health and Safety Code,  
32 to read:

33 12727. (a) The State Fire Marshal shall establish regulations  
34 pursuant to the requirements and procedures established with the  
35 Office of Administrative Law to assess ~~a fee for every dollar of~~  
36 ~~safe and sane fireworks sold~~ *fees on all import and export,*  
37 *wholesale, and retail fireworks licensees* in California to be  
38 deposited in the State Fire Marshal Fireworks Enforcement and  
39 Disposal Fund.

1 (b) In determining the appropriate amount of the fees described  
2 in subdivision (a), the State Fire Marshal shall consult with the  
3 fireworks industry *and import and export, wholesale, and retail*  
4 *fireworks licensees.*

5 (c) *The total amount of the fees collected shall not exceed the*  
6 *reasonable costs of the statewide programs described in*  
7 *subdivision (c) of Section 12728.*

8 SEC. 12. Section 12728 is added to the Health and Safety Code,  
9 to read:

10 12728. (a) The State Fire Marshal Fireworks Enforcement and  
11 Disposal Fund is hereby established in the State Treasury.

12 (b) All of the moneys collected pursuant to Section 12706 shall  
13 be deposited in the fund and shall be available, upon appropriation  
14 by the Legislature, to the State Fire Marshal for the exclusive use  
15 in statewide programs for the enforcement, prosecution related to,  
16 disposal, and management of seized dangerous fireworks, and for  
17 the education of public safety agencies in the proper handling and  
18 management of dangerous fireworks.

19 (c) All of the moneys collected pursuant to Section 12727 shall  
20 be deposited in the fund and is hereby appropriated, without regard  
21 to fiscal years, to the State Fire Marshal for the exclusive use in  
22 statewide programs ~~for the enforcement, prosecution related to,~~  
23 ~~disposal, and management of seized dangerous fireworks, and for~~  
24 ~~the education of public safety agencies, local fire departments, and~~  
25 ~~fire protection agencies in the proper handling and management~~  
26 ~~of dangerous fireworks.~~ *all of the following:*

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

30 (2) *The education of public safety agencies in the proper*  
31 *handling and management of dangerous fireworks as well as safety*  
32 *issues involving all fireworks and explosives.*

33 (3) *Assist the State Fire Marshal in identifying and evaluating*  
34 *methods to capture more detailed data relating to fires, damages,*  
35 *and injuries caused by both dangerous and safe and sane fireworks,*  
36 *and to assist with funding the eventual development and*  
37 *implementation of those methods.*

38 (4) *To further assist in public safety and education efforts within*  
39 *the general public as well as public safety agencies on the proper*  
40 *and responsible use of safe and sane fireworks.*

1 SEC. 13. Section 15301 is added to the Vehicle Code, to read:  
2 15301. The Department of Motor Vehicles, in conjunction with  
3 the State Fire Marshal, shall develop regulations and procedures  
4 to temporarily suspend the commercial motor vehicle license of a  
5 person who is operating a commercial motor vehicle while  
6 transporting dangerous fireworks having a gross weight of 10,000  
7 pounds or more. A driver of a commercial motor vehicle shall not  
8 operate a commercial motor vehicle for three years if the driver is  
9 convicted of transporting dangerous fireworks having a gross  
10 weight of 10,000 pounds or more.

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.