

AMENDED IN ASSEMBLY JUNE 25, 2007

AMENDED IN SENATE JUNE 4, 2007

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

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, 12727, and 12728 to, the Health and Safety Code, and to add Section 15301 to the Vehicle Code, relating to fireworks.

LEGISLATIVE COUNSEL'S DIGEST

SB 839, as amended, Calderon. Fireworks.

(1) The State Fireworks 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 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, *except for administrative fines imposed by local jurisdictions*, 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, *except for administrative fines imposed by local jurisdictions*, 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 *25 pounds or less of dangerous fireworks*, as specified. *The bill would also require the State Fire Marshal, in consultation with local jurisdictions, to develop regulations, in conjunction with the model ordinance, to specify a procedure on how to reimburse the Office of the State Fire Marshal for the actual costs associated with the disposal of seized dangerous fireworks and to recover those costs, as part of an administrative fine, from any person who violates that ordinance, as specified. The bill would require a local ordinance in effect on or after January 1, 2008, that is not the model ordinance to comply with these*

provisions. By requiring a higher level of service on a local agency, the bill would impose a state-mandated local program.

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 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 for use by the State Fire Marshal, upon appropriation by the Legislature, to carry out specified statewide programs.

(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: majority. Appropriation: no. 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. The State Fire Marshal shall appoint deputies and
4 employees as may be required to carry out the provisions of this
5 part, subject to approval in the annual Budget Act.

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

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

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

15 (b) Classification of fireworks and pyrotechnic devices.

16 (c) Registration of employees of licensees.

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

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

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

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

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

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

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

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

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

1 12557. (a) The Office of the State Fire Marshal shall consult
2 with public safety agencies and other stakeholders as deemed
3 necessary by the State Fire Marshal and develop a model ordinance
4 that permits local jurisdictions to adopt a streamlined enforcement
5 and administrative fine procedures related to the possession of 25
6 *pounds or less of dangerous* fireworks. These procedures shall be
7 limited to civil fines and as authorized pursuant to Section 53069.4
8 of the Government Code, *and provide that the fines collected*
9 *pursuant to this section shall not be subject to Section 12706.* The
10 model ordinance shall include provisions for reimbursing the Office
11 of the State Fire Marshal for the costs associated with the disposal
12 of seized fireworks *and collecting these disposal costs as part of*
13 *an administrative fine as described in subdivision (c).*

14 (b) *An ordinance of a local jurisdiction in effect on or after*
15 *January 1, 2008, that is related to dangerous fireworks and is not*
16 *the model ordinance described in subdivision (a) shall, as soon*
17 *as practicable, comply with all of the following:*

18 (1) *The ordinance shall be amended or adopted to include*
19 *provisions for cost reimbursement to the Office of the State Fire*
20 *Marshal and the collection of disposal costs as part of an*
21 *administrative fine as described in subdivision (c).*

22 (2) *The ordinance shall be amended or adopted to provide that*
23 *the ordinance shall be limited to a person who possesses or the*
24 *seizure of 25 pounds or less of dangerous fireworks.*

25 (3) *The ordinance shall be amended or adopted to provide that*
26 *the fines collected pursuant to the ordinance shall not be subject*
27 *to Section 12706.*

28 (c) *The State Fire Marshal shall, in consultation with local*
29 *jurisdictions, develop regulations to specify a procedure on how*
30 *to cover the cost to the Office of the State Fire Marshal for the*
31 *transportation and disposal of dangerous fireworks that are seized*
32 *by local jurisdictions. The regulations shall include, but are not*
33 *limited to, all of the following:*

34 (1) *A cost recovery procedure to collect, as part of an*
35 *administrative fine, the actual cost for transportation and disposal*
36 *of dangerous fireworks from any person who violates a local*
37 *ordinance related to dangerous fireworks.*

38 (2) *The method by which the actual cost for transportation and*
39 *disposal by the Office of the State Fire Marshal will be calculated.*

1 (3) *The method, manner, and procedure the local jurisdiction*
2 *is required to follow to forward the amounts collected pursuant*
3 *to paragraph (1) to the State Fire Marshal.*

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

6 12700. (a) Except as provided in Section 12702 and
7 subdivision (b), a person who violates any provision of this part,
8 or any regulations issued pursuant to this part, is guilty of a
9 misdemeanor, and upon conviction shall be punished by a fine of
10 not less than five hundred dollars (\$500) or more than one thousand
11 dollars (\$1,000), or by imprisonment in the county jail for not
12 exceeding one year, or by both that fine and imprisonment.

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

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

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

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

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

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

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

13 12702. Notwithstanding the provisions of Section 12700:

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

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

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

26 12703. (a) The State Fire Marshal shall, in conjunction with
27 the Department of Motor Vehicles, develop regulations and
28 procedures to temporarily suspend the commercial motor vehicle
29 license of a person who is operating a commercial motor vehicle
30 while transporting unaltered dangerous fireworks, as defined in
31 Section 12505, having a gross weight, including packaging, of
32 10,000 pounds or more.

33 (b) A driver of a commercial motor vehicle shall not operate a
34 commercial motor vehicle for three years if the driver is convicted
35 of transporting unaltered dangerous fireworks, as defined in Section
36 12505, having a gross weight, including packaging, of 10,000
37 pounds or more, as described in Section 15301 of the Vehicle
38 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, *except for administrative fines described in Section 12557*,
17 as a result of citations issued by a public safety agency, for any
18 violation of subdivision (b) of Section 12700 or of any regulation
19 adopted pursuant to subdivision (b) of Section 12700, shall be
20 deposited, as soon as practicable after the receipt of the fine or
21 forfeiture, with the county treasurer of the county in which the
22 court is situated. Amounts deposited pursuant to this section shall
23 be paid at least once a month as follows:

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

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

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

39 12726. (a) The dangerous fireworks seized pursuant to this
40 part shall be disposed of by the State Fire Marshal in the manner

1 prescribed by the State Fire Marshal at any time after the final
2 determination of proceedings under Section 12724, or upon final
3 termination of proceedings under Section 12593, whichever is
4 later. If no proceedings are commenced pursuant to Section 12724,
5 the State Fire Marshal may dispose of the fireworks after all of the
6 following requirements are satisfied:

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

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

11 (3) Photographs have been taken of the dangerous fireworks to
12 be destroyed.

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

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

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

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

31 12727. (a) The State Fire Marshal shall establish regulations
32 pursuant to the requirements and procedures established with the
33 Office of Administrative Law to assess fees on all import and
34 export, wholesale, and retail fireworks licensees in California to
35 be deposited in the State Fire Marshal Fireworks Enforcement and
36 Disposal Fund.

37 (b) In determining the appropriate amount of the fees described
38 in subdivision (a), the State Fire Marshal shall consult with the
39 fireworks industry and import and export, wholesale, and retail
40 fireworks licensees.

1 (c) The total amount of the fees collected shall not exceed the
2 reasonable costs of the statewide programs described in subdivision
3 (c) of Section 12728.

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

6 12728. (a) The State Fire Marshal Fireworks Enforcement and
7 Disposal Fund is hereby established in the State Treasury.

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

15 (c) All of the moneys collected pursuant to Section 12727 shall
16 be deposited in the fund and shall be available, upon appropriation
17 by the Legislature, to the State Fire Marshal for the exclusive use
18 in statewide programs for all of the following:

19 (1) To further assist in statewide programs for the enforcement,
20 prosecution related to, disposal, and management of seized
21 dangerous fireworks.

22 (2) The education of public safety agencies in the proper
23 handling and management of dangerous fireworks as well as safety
24 issues involving all fireworks and explosives.

25 (3) Assist the State Fire Marshal in identifying and evaluating
26 methods to capture more detailed data relating to fires, damages,
27 and injuries caused by both dangerous and safe and sane fireworks,
28 and to assist with funding the eventual development and
29 implementation of those methods.

30 (4) To further assist in public safety and education efforts within
31 the general public as well as public safety agencies on the proper
32 and responsible use of safe and sane fireworks.

33 SEC. 13. Section 15301 is added to the Vehicle Code, to read:

34 15301. The Department of Motor Vehicles, in conjunction with
35 the State Fire Marshal, shall develop regulations and procedures
36 to temporarily suspend the commercial motor vehicle license of a
37 person who is operating a commercial motor vehicle while
38 transporting dangerous fireworks having a gross weight of 10,000
39 pounds or more. A driver of a commercial motor vehicle shall not
40 operate a commercial motor vehicle for three years if the driver is

1 convicted of transporting dangerous fireworks having a gross
2 weight of 10,000 pounds or more.

3 SEC. 14. No reimbursement is required by this act pursuant to
4 Section 6 of Article XIII B of the California Constitution for certain
5 costs that may be incurred by a local agency or school district
6 because, in that regard, this act creates a new crime or infraction,
7 eliminates a crime or infraction, or changes the penalty for a crime
8 or infraction, within the meaning of Section 17556 of the
9 Government Code, or changes the definition of a crime within the
10 meaning of Section 6 of Article XIII B of the California
11 Constitution.

12 However, if the Commission on State Mandates determines that
13 this act contains other costs mandated by the state, reimbursement
14 to local agencies and school districts for those costs shall be made
15 pursuant to Part 7 (commencing with Section 17500) of Division
16 4 of Title 2 of the Government Code.