

AMENDED IN ASSEMBLY AUGUST 20, 2007

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, *and require the State Fire Marshal to furnish a copy of the evaluation methods to any interested person upon request.* 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 SEC. 3. Section 12556 is added to the Health and Safety Code,
28 to read:

29 12556. ~~On~~ *In addition to the obligations described in Section*
30 *13110.5, on or before July 1, 2008, the State Fire Marshal shall*
31 *identify and evaluate methods to capture more detailed data relating*
32 *to fires, damages, and injuries caused by both dangerous fireworks*
33 *and safe and sane fireworks. These evaluation methods shall*
34 *include a cost analysis related to capturing and reporting the data*
35 *and shall meet or exceed the specificity, detail, and reliability of*
36 *the data captured under the former California Fire Incident*
37 *Reporting System (CFIRS). The State Fire Marshal shall furnish*

1 *a copy of these evaluation methods to any interested person upon*
2 *request.*

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

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

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

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

26 (2) The ordinance shall be amended or adopted to provide that
27 the ordinance shall be limited to a person who possesses or the
28 seizure of 25 pounds or less of dangerous fireworks.

29 (3) The ordinance shall be amended or adopted to provide that
30 the fines collected pursuant to the ordinance shall not be subject
31 to Section 12706.

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

38 (1) A cost recovery procedure to collect, as part of an
39 administrative fine, the actual cost for transportation and disposal

1 of dangerous fireworks from any person who violates a local
2 ordinance related to dangerous fireworks.

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

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

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

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

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

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

30 (2) A person who possesses a gross weight, including packaging,
31 of not less than 25 pounds or more than 100 pounds of unaltered
32 dangerous fireworks, as defined in Section 12505, is guilty of a
33 public offense, and upon conviction shall be punished by a fine of
34 ~~not less than one thousand dollars (\$1,000) or more than five~~
35 ~~thousand dollars (\$5,000), or by imprisonment in a county jail for~~
36 ~~not exceeding one year or imprisonment in the state prison.~~
37 *imprisonment in the state prison or the county jail for not more*
38 *than one year, or by a fine of not less than one thousand dollars*
39 *(\$1,000) or more than five thousand dollars (\$5,000), or by both*
40 *that fine and imprisonment.*

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

12 (4) A person who possesses a gross weight, including packaging,
13 of more than ~~5,000~~ *1,000* pounds of unaltered dangerous fireworks,
14 as defined in Section 12505, is guilty of a public offense, and upon
15 conviction shall be punished by ~~a fine of not less than ten thousand~~
16 ~~dollars (\$10,000) or more than fifty thousand dollars (\$50,000),~~
17 ~~and by imprisonment in a county jail for not exceeding one year~~
18 ~~or imprisonment in the state prison.~~ *imprisonment in the state*
19 *prison or the county jail for not more than one year, or by a fine*
20 *of not less than ten thousand dollars (\$10,000) or more than fifty*
21 *thousand dollars (\$50,000), or by both that fine and imprisonment.*

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

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

27 12702. Notwithstanding the provisions of Section 12700:

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

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

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

1 12703. (a) The State Fire Marshal shall, in conjunction with
 2 the Department of Motor Vehicles, develop regulations and
 3 procedures to temporarily suspend the commercial motor vehicle
 4 license of a person who is operating a commercial motor vehicle
 5 while transporting unaltered dangerous fireworks, as defined in
 6 Section 12505, having a gross weight, including packaging, of
 7 10,000 pounds or more.

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

14 (c) This section shall not apply to a person who holds and is
 15 operating within the scope of a valid license as described in Section
 16 12516 or valid permit as described in Section 12522.

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

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

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

27 12706. Notwithstanding Section 1463 of the Penal Code, all
 28 fines and forfeitures imposed by or collected in any court of this
 29 state, except for administrative fines described in Section 12557,
 30 as a result of citations issued by a public safety agency, for any
 31 violation of subdivision (b) of Section 12700 or of any regulation
 32 adopted pursuant to subdivision (b) of Section 12700, shall be
 33 deposited, as soon as practicable after the receipt of the fine or
 34 forfeiture, with the county treasurer of the county in which the
 35 court is situated. Amounts deposited pursuant to this section shall
 36 be paid at least once a month as follows:

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

1 Controller. At the time of the transmittal, the county auditor shall
2 forward to the Controller, on the form or forms prescribed by the
3 Controller, a record of the imposition, collection, and payments
4 of the fines or forfeitures.

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

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

12 12726. (a) The dangerous fireworks seized pursuant to this
13 part shall be disposed of by the State Fire Marshal in the manner
14 prescribed by the State Fire Marshal at any time after the final
15 determination of proceedings under Section 12724, or upon final
16 termination of proceedings under Section 12593, whichever is
17 later. If no proceedings are commenced pursuant to Section 12724,
18 the State Fire Marshal may dispose of the fireworks after all of the
19 following requirements are satisfied:

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

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

24 (3) Photographs have been taken of the dangerous fireworks to
25 be destroyed.

26 (4) The State Fire Marshal has given written approval for the
27 destruction of the dangerous fireworks. This approval shall specify
28 the total weight of the dangerous fireworks seized, the total weight
29 of the dangerous fireworks to be destroyed, and the total weight
30 of the dangerous fireworks not to be destroyed.

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

35 (c) If dangerous fireworks are seized pursuant to a local
36 ordinance that provides for administrative fines or penalties and
37 these fines or penalties are collected, the local government entity
38 collecting the fines or penalties shall forward 65 percent of the
39 collected moneys to the Controller for deposit in the State Fire

1 Marshal Fireworks Enforcement and Disposal Fund, as described
2 in Section 12728.

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

5 12727. (a) The State Fire Marshal shall establish regulations
6 pursuant to the requirements and procedures established with the
7 Office of Administrative Law to assess fees on all import and
8 export, wholesale, and retail fireworks licensees in California to
9 be deposited in the State Fire Marshal Fireworks Enforcement and
10 Disposal Fund.

11 (b) In determining the appropriate amount of the fees described
12 in subdivision (a), the State Fire Marshal shall consult with the
13 fireworks industry and import and export, wholesale, and retail
14 fireworks licensees.

15 (c) The total amount of the fees collected shall not exceed the
16 reasonable costs of the statewide programs described in subdivision
17 (c) of Section 12728.

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

20 12728. (a) The State Fire Marshal Fireworks Enforcement and
21 Disposal Fund is hereby established in the State Treasury.

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

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

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

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

39 (3) Assist the State Fire Marshal in identifying and evaluating
40 methods to capture more detailed data relating to fires, damages,

1 and injuries caused by both dangerous and safe and sane fireworks,
2 and to assist with funding the eventual development and
3 implementation of those methods.

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

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

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

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

26 However, if the Commission on State Mandates determines that
27 this act contains other costs mandated by the state, reimbursement
28 to local agencies and school districts for those costs shall be made
29 pursuant to Part 7 (commencing with Section 17500) of Division
30 4 of Title 2 of the Government Code.