

AMENDED IN ASSEMBLY AUGUST 31, 2007

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**

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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.

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. 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

1 the data captured under the former California Fire Incident  
2 Reporting System (CFIRS). The State Fire Marshal shall furnish  
3 a copy of these evaluation methods to any interested person upon  
4 request.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (2) A person who possesses a gross weight, including packaging,  
33 of not less than 25 pounds or more than 100 pounds of unaltered  
34 dangerous fireworks, as defined in Section 12505, is guilty of a  
35 public offense, and upon conviction shall be punished by  
36 imprisonment in ~~the state prison or~~ the county jail for not more  
37 than one year, or by a fine of not less than one thousand dollars  
38 (\$1,000) or more than five thousand dollars (\$5,000), or by both  
39 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 ~~4,000~~ 5,000 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 imprisonment in the state prison or the county jail for not more  
6 than one year, or by a fine of not less than five thousand dollars  
7 (\$5,000) or more than ten thousand dollars (\$10,000), or by both  
8 that fine and imprisonment.

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

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

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

21 12702. Notwithstanding the provisions of Section 12700:

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

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

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

34 12703. (a) The State Fire Marshal shall, in conjunction with  
35 the Department of Motor Vehicles, develop regulations and  
36 procedures to temporarily suspend the commercial motor vehicle  
37 license of a person who is operating a commercial motor vehicle  
38 while transporting unaltered dangerous fireworks, as defined in  
39 Section 12505, having a gross weight, including packaging, of  
40 10,000 pounds or more.

1 (b) A driver of a commercial motor vehicle shall not operate a  
 2 commercial motor vehicle for three years if the driver is convicted  
 3 of transporting unaltered dangerous fireworks, as defined in Section  
 4 12505, having a gross weight, including packaging, of 10,000  
 5 pounds or more, as described in Section 15301 of the Vehicle  
 6 Code.

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

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

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

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

20 12706. Notwithstanding Section 1463 of the Penal Code, all  
 21 fines and forfeitures imposed by or collected in any court of this  
 22 state, except for administrative fines described in Section 12557,  
 23 as a result of citations issued by a public safety agency, for any  
 24 violation of subdivision (b) of Section 12700 or of any regulation  
 25 adopted pursuant to subdivision (b) of Section 12700, shall be  
 26 deposited, as soon as practicable after the receipt of the fine or  
 27 forfeiture, with the county treasurer of the county in which the  
 28 court is situated. Amounts deposited pursuant to this section shall  
 29 be paid at least once a month as follows:

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

38 (b) Thirty-five percent to the local public safety agency in the  
 39 county in which the offense was committed to reimburse the local  
 40 public safety agency for expenses, including, but not limited to,

1 the costs for handling, processing, photographing, and storing  
2 seized dangerous fireworks.

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

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

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

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

17 (3) Photographs have been taken of the dangerous fireworks to  
18 be destroyed.

19 (4) The State Fire Marshal has given written approval for the  
20 destruction of the dangerous fireworks. This approval shall specify  
21 the total weight of the dangerous fireworks seized, the total weight  
22 of the dangerous fireworks to be destroyed, and the total weight  
23 of the dangerous fireworks not to be destroyed.

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

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

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

37 12727. (a) The State Fire Marshal shall establish regulations  
38 pursuant to the requirements and procedures established with the  
39 Office of Administrative Law to assess fees on all import and  
40 export, wholesale, and retail fireworks licensees in California to

1 be deposited in the State Fire Marshal Fireworks Enforcement and  
2 Disposal Fund.

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

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

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

12 12728. (a) The State Fire Marshal Fireworks Enforcement and  
13 Disposal Fund is hereby established in the State Treasury.

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

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

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

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

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

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

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

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