Senate Bill No. 839

CHAPTER 563

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.

[Approved by Governor October 12, 2007. Filed with Secretary of State October 12, 2007.]

LEGISLATIVE COUNSEL'S DIGEST

SB 839, 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.

The people of the State of California do enact as follows:

SECTION 1. Section 12551 of the Health and Safety Code is amended to read:

12551. The State Fire Marshal shall appoint deputies and employees as may be required to carry out the provisions of this part, subject to approval in the annual Budget Act.

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

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

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

(b) Classification of fireworks and pyrotechnic devices.

(c) Registration of employees of licensees.

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

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

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

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

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

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

12556. In addition to the obligations described in Section 13110.5, on or before July 1, 2008, the State Fire Marshal shall identify and evaluate methods to capture more detailed data relating to fires, damages, and injuries caused by both dangerous fireworks and safe and sane fireworks. These evaluation methods shall include a cost analysis related to capturing and reporting the data and shall meet or exceed the specificity, detail, and reliability of the data captured under the former California Fire Incident Reporting System (CFIRS). The State Fire Marshal shall furnish a copy of these evaluation methods to any interested person upon request.

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

12557. (a) The Office of the State Fire Marshal shall consult with public safety agencies and other stakeholders as deemed necessary by the State Fire Marshal and 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. These procedures shall be limited to civil fines and as authorized pursuant to Section 53069.4 of the Government Code, and provide that the fines collected pursuant to this section shall not be subject to Section 12706. The model ordinance shall include provisions for reimbursing the Office of the State Fire Marshal for the costs associated with the disposal of seized fireworks and collecting these disposal costs as part of an administrative fine as described in subdivision (c).

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

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

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

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

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

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

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

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

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

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

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

(1) A person who possesses a gross weight, including packaging, of less than 25 pounds of unaltered dangerous fireworks, as defined in Section

12505, is guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than five hundred dollars ($500) or more than one thousand dollars ($1,000), or by imprisonment in the county jail for not exceeding one year, or both that fine and imprisonment. Upon a second or subsequent conviction, a person shall be punished by a fine of not less than one thousand dollars ($1,000) or by imprisonment in a county jail not exceeding one year or by both that fine and imprisonment.

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

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

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

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

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

12702. Notwithstanding the provisions of Section 12700:

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

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

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

12703. (a) The State Fire Marshal shall, in conjunction with the Department of Motor Vehicles, develop regulations and procedures to temporarily suspend the commercial motor vehicle license of a person who

is operating a commercial motor vehicle while transporting unaltered dangerous fireworks, as defined in Section 12505, having a gross weight, including packaging, of 10,000 pounds or more.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15301. The Department of Motor Vehicles, in conjunction with the State Fire Marshal, shall 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. A driver of a commercial motor vehicle shall not operate a commercial motor vehicle for three years if the driver is convicted of transporting dangerous fireworks having a gross weight of 10,000 pounds or more.

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

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

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