

By: Ortega, Lucio III, Oliverson, Vo, Burns

H.B. No. 2289

Substitute the following for H.B. No. 2289:

By: Lucio III

C.S.H.B. No. 2289

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of amusement rides by the Texas Department of Licensing and Regulation, including the creation of the amusement ride regulation advisory board; providing authority to increase a fee.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 2151.002, Occupations Code, is amended by amending Subdivisions (4) and (5) and adding Subdivision (5-a) to read as follows:

(4) "Commission" [~~"Commissioner"~~] means the Texas Commission of Licensing and Regulation [~~commissioner of insurance~~].

(5) "Department" means the Texas Department of Licensing and Regulation [~~Insurance~~].

(5-a) "Executive director" means the executive director of the department.

SECTION 2. Section 2151.051, Occupations Code, is amended to read as follows:

Sec. 2151.051. GENERAL POWERS AND DUTIES; RULES. (a) The executive director [~~commissioner~~] shall administer and enforce this chapter.

(b) The commission, in consultation with the amusement ride regulation advisory board, shall adopt all rules necessary to administer and enforce this chapter.

SECTION 3. Section 2151.052, Occupations Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) The commission [~~commissioner~~] shall establish reasonable and necessary fees [~~, in an amount not to exceed \$40 per year,~~] for each amusement ride covered by this chapter in an amount not to exceed the greater of:

(1) \$40 per year; or

(2) an annual amount determined by the commission after consultation with the amusement ride regulation advisory board established under Subchapter E.

(a-1) A fee collected under this section may only be used for purposes of administering this chapter.

SECTION 4. Section 2151.101(a), Occupations Code, is amended to read as follows:

(a) A person may not operate an amusement ride unless the person:

(1) has had the amusement ride inspected at least once a year by an insurer or a person with whom the insurer has contracted;

(2) obtains a written certificate from the insurer or person with whom the insurer has contracted stating that the amusement ride:

(A) has been inspected;

(B) meets the standards for insurance coverage;

and

(C) is covered by the insurance required by

Subdivision (3);

(3) except as provided by Sections 2151.1011 and 2151.1012, has a combined single limit or split limit insurance policy currently in effect written by an insurance company authorized to do business in this state or by a surplus lines insurer, as defined by Chapter 981, Insurance Code, or has an independently procured policy subject to Chapter 101, Insurance Code, insuring the owner or operator against liability for injury to persons arising out of the use of the amusement ride in an amount of not less than:

(A) for Class A amusement rides:

(i) \$100,000 bodily injury and \$50,000 property damage per occurrence with a \$300,000 annual aggregate; or

(ii) a \$150,000 per occurrence combined single limit with a \$300,000 annual aggregate; and

(B) for Class B amusement rides:

(i) \$1,000,000 bodily injury and \$500,000 property damage per occurrence; or

(ii) \$1,500,000 per occurrence combined single limit;

(4) files with the department ~~[commissioner]~~, as required by this chapter, the inspection certificate and the insurance policy or a photocopy of the certificate or policy authorized by the executive director ~~[commissioner]~~; and

(5) files with each sponsor, lessor, landowner, or other person responsible for the amusement ride being offered for use by the public a photocopy of the inspection certificate and the

1 insurance policy required by this subsection.

2 SECTION 5. Sections 2151.1021(a) and (c), Occupations Code,
3 are amended to read as follows:

4 (a) The commission, in consultation with the amusement ride
5 regulation advisory board, ~~[commissioner]~~ shall adopt rules
6 requiring operators of mobile amusement rides to perform
7 inspections of mobile amusement rides, including rules requiring
8 daily inspections of safety restraints.

9 (c) The executive director ~~[commissioner]~~ shall prescribe
10 forms for inspections required under this section and shall require
11 records of the inspections to be made available for inspection by
12 any municipality, county, or state law enforcement officials at any
13 location at which an amusement ride is operated.

14 SECTION 6. Sections 2151.1022(b) and (c), Occupations Code,
15 are amended to read as follows:

16 (b) The operator shall file with the department
17 ~~[commissioner]~~ quarterly a report, on a form designed by the
18 executive director ~~[commissioner]~~, describing each governmental
19 action taken in the quarter covered by the report for which the
20 operator is required by Subsection (a) to maintain records. [~~A~~
21 ~~report is not required in any quarter in which no reportable~~
22 ~~governmental action was taken in any state in which the person~~
23 ~~operated the amusement ride.~~]

24 (c) A person who operates an amusement ride shall maintain
25 for not less than two years at any location where the ride is
26 operated, for inspection by a municipal, county, or state law
27 enforcement official, a photocopy of any quarterly report required

under this section or Section 2151.103 to be filed with the department ~~[commissioner]~~.

SECTION 7. Section 2151.103(c), Occupations Code, is amended to read as follows:

(c) The operator shall file an injury report with the department ~~[commissioner]~~ on a quarterly basis. The report shall be made on a form prescribed by the executive director ~~[commissioner]~~ and shall include a description of each injury caused by a ride that results in death or requires medical treatment.

SECTION 8. Section 2151.105(a), Occupations Code, is amended to read as follows:

(a) The commission, in consultation with the amusement ride regulation advisory board, ~~[commissioner]~~ shall adopt rules requiring that a sign be posted to inform the public how to report an amusement ride that appears to be unsafe or to report an amusement ride operator who appears to be violating the law.

SECTION 9. Section 2151.151, Occupations Code, is amended to read as follows:

Sec. 2151.151. INJUNCTION. The district attorney of a county in which an amusement ride is operated or, on request of the commission or the executive director ~~[commissioner of insurance]~~, the attorney general or an agent of the attorney general, may seek an injunction against a person operating an amusement ride in violation of this chapter or in violation of a rule adopted by the commission ~~[commissioner]~~ under Section 2151.1021 or 2151.105.

SECTION 10. Sections 2151.152(a), (b), and (c), Occupations

Code, are amended to read as follows:

(a) The department or a [A] municipal, county, or state law enforcement official, in conjunction with the department, may determine compliance with a provision of Subchapter C, other than Section 2151.104, [~~in conjunction with the commissioner~~] and may institute an action in a court of competent jurisdiction to enforce this chapter.

(b) The department or a [A] municipal, county, or state law enforcement official may enter and inspect without notice any amusement ride at any time to ensure public safety.

(c) The operator of an amusement ride shall immediately provide the inspection certificate and the insurance policy required by Section 2151.101 to the department or a municipal, county, or state law enforcement official requesting the information. A photocopy of the inspection certificate or insurance policy may be provided instead of the certificate or policy.

SECTION 11. Sections 2151.1525(a), (b), and (d), Occupations Code, are amended to read as follows:

(a) Except as provided by Subsection (e), the executive director or a municipal, county, or state law enforcement official may immediately prohibit operation of an amusement ride if:

(1) the operator of the amusement ride is unable to provide the documents or a photocopy of the documents required by Section 2151.152(c);

(2) the executive director or law enforcement official reasonably believes the amusement ride is not in compliance with

1 Section 2151.101; or

2 (3) the operation of the amusement ride, conduct of a
3 person operating the amusement ride, conduct of a person assembling
4 the amusement ride if it is a mobile amusement ride, or any other
5 circumstance causes the executive director or law enforcement
6 official to reasonably believe that the amusement ride is unsafe or
7 the safety of a passenger on the amusement ride is threatened.

8 (b) If the operation of an amusement ride is prohibited
9 under Subsection (a)(1) or (2), a person may not operate the
10 amusement ride unless:

11 (1) the operator presents to the executive director or
12 the appropriate municipal, county, or state law enforcement
13 official proof of compliance with Section 2151.101; or

14 (2) the executive director [~~commissioner~~] or the
15 executive director's [~~commissioner's~~] designee determines that on
16 the date the amusement ride's operation was prohibited the operator
17 had on file with the department [~~board~~] the documents required by
18 Section 2151.101 and issues a written statement permitting the
19 amusement ride to resume operation.

20 (d) If on the date an amusement ride's operation is
21 prohibited under Subsection (a)(3) the amusement ride is in
22 compliance with Section 2151.101, a person may not operate the
23 amusement ride until:

24 (1) on-site corrections are made;

25 (2) an order from a district judge, county judge,
26 judge of a county court at law, justice of the peace, or municipal
27 judge permits the amusement ride to resume operation; or

(3) an insurance company insuring the amusement ride on the date the amusement ride's operation was prohibited:

(A) reinspects the amusement ride in the same manner required by Section 2151.101; and

(B) delivers to the executive director ~~[commissioner]~~ or the executive director's ~~[commissioner's]~~ designee and the appropriate law enforcement official a reinspection certificate:

(i) stating that the required reinspection has occurred;

(ii) stating that the amusement ride meets coverage standards and is covered by insurance in compliance with Section 2151.101; and

(iii) explaining the necessary repairs, if any, that have been made to the amusement ride after its operation was prohibited.

SECTION 12. Section 2151.1526(b), Occupations Code, is amended to read as follows:

(b) If a mobile amusement ride was in compliance with Section 2151.101 when its operation was initially prohibited under Subsection (a), a person may resume operating the mobile amusement ride only after an insurance company insuring the amusement ride on the date its operation was prohibited:

(1) reinspects the amusement ride in the same manner required under Section 2151.101; and

(2) delivers to the executive director ~~[commissioner]~~ or the executive director's ~~[commissioner's]~~ designee a

reinspection certificate:

(A) stating that the required reinspection has occurred;

(B) stating that the amusement ride meets coverage standards and is covered by insurance in compliance with Section 2151.101; and

(C) explaining the necessary repairs, if any, that have been made to the amusement ride after its operation was prohibited.

SECTION 13. Section 2151.153(a), Occupations Code, is amended to read as follows:

(a) A person commits an offense if the person fails to comply with any requirement of:

(1) Section 2151.101, 2151.102, 2151.103, 2151.1525(b), (c), or (d), or 2151.1526(a); or

(2) a rule adopted by the commission [~~commissioner~~] under Section 2151.1021 or 2151.105.

SECTION 14. Subchapter D, Chapter 2151, Occupations Code, is amended by adding Section 2151.154 to read as follows:

Sec. 2151.154. EMERGENCY ORDER. (a) The executive director may issue an emergency order if the executive director determines that an emergency exists requiring immediate action to protect the public health and safety and the action is necessary to prevent a violation of:

(1) this chapter; or

(2) a rule adopted by the commission or an order issued by the executive director under this chapter.

1 (b) The executive director may, as required by the
2 circumstances, issue the emergency order with or without notice and
3 a hearing.

4 (c) If an emergency order is issued under this section
5 without a hearing, the executive director shall set the time and
6 place for a hearing conducted by the State Office of Administrative
7 Hearings, and the office shall issue a proposal for decision to
8 affirm, modify, or set aside the emergency order. The proposal for
9 decision must affirm the order if reasonable cause to issue the
10 order exists.

11 (d) The commission by rule may prescribe procedures for the
12 determination and appeal of an emergency order issued under this
13 section, including a rule allowing the commission to issue a final
14 order affirming, modifying, or setting aside a proposal for
15 decision issued by the State Office of Administrative Hearings
16 under Subsection (c).

17 SECTION 15. Chapter 2151, Occupations Code, is amended by
18 adding Subchapter E to read as follows:

19 SUBCHAPTER E. AMUSEMENT RIDE REGULATION ADVISORY BOARD

20 Sec. 2151.201. DEFINITION. In this subchapter, "advisory
21 board" means the amusement ride regulation advisory board.

22 Sec. 2151.202. ADVISORY BOARD. The amusement ride
23 regulation advisory board is created.

24 Sec. 2151.203. ADVISORY BOARD COMPOSITION. The advisory
25 board consists of nine members appointed by the presiding officer
26 of the commission, with the commission's approval, as follows:

27 (1) one member who represents the fixed amusement park

1 industry;

2 (2) one member who represents the traveling amusement
3 ride industry;

4 (3) one member who represents the inflatable device
5 industry;

6 (4) one member who represents the water park industry;

7 (5) one member who represents the amusement ride
8 insurance industry;

9 (6) one member who represents a company that
10 manufactures, installs, or services amusement rides;

11 (7) one member who represents an organization that
12 sponsors or conducts fairs, festivals, or events in this state that
13 include an amusement ride; and

14 (8) two members of the public.

15 Sec. 2151.204. DUTIES OF ADVISORY BOARD. The advisory
16 board shall provide advice and recommendations to the commission
17 and department on technical matters relevant to the administration
18 of this chapter, including providing advice on rulemaking.

19 Sec. 2151.205. TERMS; VACANCIES. (a) Members of the
20 advisory board are appointed for staggered six-year terms. The
21 terms of three members expire September 1 of each odd-numbered
22 year.

23 (b) If a vacancy occurs on the advisory board during a
24 member's term, the presiding officer of the commission, with the
25 commission's approval, shall appoint a replacement who meets the
26 qualifications for the vacant position to serve for the remainder
27 of the term.

1 (c) Notwithstanding Subsection (a), of the initial members
2 of the advisory board, three members shall serve terms of two years,
3 three members shall serve terms of four years, and three members
4 shall serve terms of six years. The members shall draw lots to
5 determine the length of their terms. This subsection expires
6 September 1, 2025.

7 Sec. 2151.206. CHAIR. (a) The presiding officer of the
8 commission shall designate a member of the advisory board to serve
9 as the chair of the advisory board for a term of one year.

10 (b) The chair may vote on any matter before the advisory
11 board.

12 Sec. 2151.207. MEETINGS. The advisory board shall meet at
13 the call of the executive director or presiding officer of the
14 commission.

15 Sec. 2151.208. COMPENSATION; REIMBURSEMENT OF EXPENSES. A
16 member of the advisory board may not receive compensation but is
17 entitled to reimbursement for actual and necessary expenses
18 incurred in performing the functions of the advisory board, subject
19 to the General Appropriations Act.

20 Sec. 2151.209. APPLICABILITY OF OTHER LAW. Sections
21 [2110.002](#), [2110.003](#), and [2110.008](#), Government Code, do not apply to
22 the advisory board.

23 SECTION 16. The Texas Department of Insurance and the Texas
24 Department of Licensing and Regulation may enter into a memorandum
25 of understanding that:

26 (1) identifies in detail the applicable powers and
27 duties that are transferred between the two agencies by this Act;

1 and

2 (2) establishes a plan for the identification and
3 transfer of the records, personnel, property, and unspent
4 appropriations of the Texas Department of Insurance that are
5 related to the regulation of amusement rides under Chapter 2151,
6 Occupations Code.

7 SECTION 17. (a) On September 1, 2021, the following are
8 transferred from the Texas Department of Insurance to the Texas
9 Department of Licensing and Regulation:

10 (1) the powers, duties, functions, programs, and
11 activities of the Texas Department of Insurance relating to the
12 licensing and regulation of amusement rides under Chapter 2151,
13 Occupations Code;

14 (2) any obligations and contracts of the Texas
15 Department of Insurance that are directly related to implementing a
16 power, duty, function, program, or activity transferred under this
17 Act; and

18 (3) all property and records in the custody of the
19 Texas Department of Insurance that are related to a power, duty,
20 function, program, or activity transferred under this Act and all
21 funds appropriated by the legislature for that power, duty,
22 function, program, or activity.

23 (b) The rules, policies, procedures, and decisions of the
24 commissioner of insurance under Chapter 2151, Occupations Code, are
25 continued in effect as rules, policies, procedures, and decisions
26 of the Texas Commission of Licensing and Regulation until
27 superseded by a rule or other appropriate action of the Texas

1 Commission of Licensing and Regulation.

2 SECTION 18. (a) Except as provided by Subsection (b) of
3 this section, this Act takes effect September 1, 2021.

4 (b) Section 16 of this Act takes effect September 1, 2019.