

BILL ANALYSIS

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DIGEST AND PURPOSE

Currently, all amusement rides in Texas are regulated under the Amusement Ride Safety Inspection and Insurance Act. That Act requires operators to annually obtain a certificate from an insurer stating that each ride has been inspected and meets standards for insurance coverage. Texas does not require independent state inspections for mobile amusement rides. As proposed, S.B. 1622 sets up a licensing and inspection system under the Texas Department of Licensing and Regulation. S.B. 1622 also creates an advisory board, grants rulemaking authority to the commissioner of licensing and regulation, sets out insurance requirements, provides for the registration of inspectors, and authorizes inspections by law enforcement personnel.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of licensing and regulation in SECTION 1 (Sections 761.004, 761.005, 761.007, 761.013, 761.015, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 9A, Health and Safety Code, by adding Chapter 761, as follows:

CHAPTER 761. MOBILE AMUSEMENT RIDES

Sec. 761.001. DEFINITIONS. Defines “advisory board,” “amusement ride,” “ASTM standards,” “commission,” “commissioner,” “department,” “mobile amusement ride,” and “operator.”

Sec. 761.002. ADVISORY BOARD. Requires the commissioner of licensing and regulation (commissioner) to appoint the mobile amusement ride advisory board. Provides that the advisory board is composed of six certain members. Requires the office of public insurance counsel to appoint one representative of that office to the advisory board to serve ex officio. Provides that the advisory board members serve at the will of the commissioner. Requires the commissioner to appoint a presiding officer of the advisory board. Requires the advisory board to meet at least twice each calendar year. Prohibits an advisory board member from receiving compensation for service on the advisory board, but provides that the member is entitled to reimbursement for the travel expenses incurred by the member while conducting the business of the advisory board, as provided by the General Appropriations Act. Provides that Chapter 2110 (State Agency Advisory Committees), Government Code, does not apply to the advisory board.

Sec. 761.003. ADVISORY BOARD DUTIES. Requires the advisory board, to protect public safety and to identify and correct potential hazards, to advise the commissioner on: the development and adoption of rules for mobile amusement rides, the safety of mobile amusement rides and related equipment used in this state by the public, and any other matter considered by the commissioner to be relevant to the safety of mobile amusement rides in this state.

Sec. 761.004. COMMISSIONER POWERS AND DUTIES. Requires the commissioner, with the advice of the advisory board, to adopt rules to administer and enforce this chapter. Authorizes the commissioner to employ staff in the Texas Department of Licensing and Regulation (department) as necessary to administer and enforce this chapter.

Sec. 761.005. RULES. Requires the commissioner to adopt rules to ensure the safe and uniform maintenance by operators of amusement rides in this state. Requires rules adopted under this subsection to meet or exceed ASTM standards for mobile amusement rides and devices. Provides that the rules adopted under this section are minimum standards. Requires the rules to be comprehensive and set certain guidelines. Authorizes the rules to include requirements for the examination, testing, and licensing of operators. Requires rules adopted under this section to include methods to test and identify stress-damaged and wear-damaged components of a ride that could result in a failure likely to cause serious injury or death to a passenger or bystander. Authorizes rules adopted under this chapter to apply to mobile amusement rides that are sold in this state.

Sec. 761.006. FEES. Requires the commissioner to establish reasonable and necessary annual registration and inspection fees for mobile amusement rides operated in this state. Requires all fees collected under this chapter to be deposited to the credit of an account in the general revenue fund that may be used only by the commissioner to administer and enforce this chapter.

Sec. 761.007. INSURANCE REQUIREMENTS. Prohibits a person, except as provided by this section, from operating a mobile amusement ride unless the ride is covered by an insurance policy that insures the operator against liability in an amount not less than \$1 million per occurrence and that is written by an insurance company authorized to do business in this state, or by an eligible surplus lines insurer under Article 1.14-2 (Surplus Lines Insurance), Insurance Code, or by an independently procured policy subject to Chapter 101 (Unauthorized Insurance), Insurance Code. Prohibits a person from operating a mobile amusement ride designed primarily for children younger than 12 years of age unless the ride is covered by a \$500,000 per occurrence liability insurance policy. Requires an insurance company issuing a policy under this section to issue an insurance certificate to the operator and mail a copy of the certificate to the department. Requires the certificate to indicate the dates the insurance policy is in effect and the amount and type of coverage. Authorizes the commissioner by rule to establish more stringent insurance requirements than those imposed by this section.

Sec. 761.008. REGISTERED INSPECTORS. Requires the department to register inspectors of mobile amusement rides under this chapter. Requires a person, to be eligible to register, to at least meet ASTM standards for certification as an inspector. Provides that a person who assists a registered inspector is not required to be registered. Authorizes the commissioner to set a fee for registering inspectors in an amount reasonable and necessary to administer the registration program and set an annual renewal fee for registered inspectors in an amount not less than \$25. Prohibits the commissioner from prohibiting a registered inspector from inspecting a mobile amusement ride or related equipment. Requires the commissioner to compile a list of registered inspectors. Authorizes the commissioner to deny, suspend, or revoke the registration of any certified inspector under certain circumstances.

Sec. 761.009. LAW ENFORCEMENT INSPECTIONS. Authorizes a municipal, county, or state law enforcement officer at any time without notice to inspect a mobile amusement ride and request proof of compliance with the requirements of this chapter to ensure public safety. Requires the operator of a mobile amusement ride, on request by a law enforcement officer, to immediately provide the insurance certificate and inspection reports required by this chapter. Requires a law enforcement officer acting under this section to prohibit the operation of a mobile amusement ride under certain circumstances. Prohibits the operation, if the operation of

a mobile amusement ride is prohibited under this section, from resuming until the operator is able to show a law enforcement officer a current insurance certificate and inspection report for that specific mobile amusement ride. Prohibits the operation, if the operation of a mobile amusement ride is terminated under this section, from resuming until the matter is investigated by a registered inspector and the commissioner determines that the mobile amusement ride is in compliance with applicable standards and regulations. Provides that unless a law enforcement officer's act or omission involves intentional conduct, gross negligence, or malice, the officer is not liable for terminating or failing to terminate the operation of a mobile amusement ride.

Sec. 761.010. **CONDITION OF OPERATORS.** Prohibits a person from operating a mobile amusement ride under the influence of illegal drugs, while intoxicated, or while the person's physical or mental condition does not allow the person to operate the ride safely.

Sec. 761.011. **DISPLAY OF RIDE RESTRICTIONS.** Requires all restrictions for passengers, including height and physical restrictions, required by this chapter or by rules adopted under this chapter to be displayed prominently on the ride and to be visible from all boarding areas.

Sec. 761.012. **RIDE OPERATION REQUIREMENTS.** Requires the operator of a mobile amusement ride who obtains the insurance coverage required under this chapter to deliver a copy of the current insurance certificate to each operator of the ride. Prohibits a mobile amusement ride from being operated unless each operator possesses a current inspection report and insurance certificate.

Sec. 761.013. **INSPECTIONS.** Requires a mobile amusement ride to be inspected by a registered inspector at least once every 180 days. Requires the registered inspector, after each inspection, to issue a completed report to the mobile amusement ride operator and file a copy with the department. Requires the fee for an inspection of a mobile amusement ride to be \$50 unless the commissioner by rule increases the fee. Requires an inspection report to be made on a form prescribed by the commissioner and be signed and dated by the registered inspector. Requires the department to maintain inspection reports filed under this section for at least 10 years. Requires the inspection report, if an inspection produces evidence of a violation of this chapter or rules adopted under this chapter or indicates a need for corrective action on the part of an operator, to include a detailed description of each violation, discrepancy, or item in need of attention. Requires the inspector, if an inspection finds no violation or need for corrective action, to provide the operator with a weather-proof, adhesive sticker, signed by the inspector, and showing the date of the inspection, that the inspector shall affix to the mobile amusement ride in a visible location. Authorizes the requirements of this section, if multiple mobile amusement rides are being operated at the same location, to be satisfied with a single inspection report and inspection certificate relating to all mobile amusement rides being operated at that location. Requires a report issued under this subsection to include certain information.

Sec. 761.014. **INSPECTION BY OPERATOR.** Prohibits a mobile amusement ride from being operated until an operator of the ride has inspected it to determine whether the ride is in safe working condition after the ride has been assembled at a location where rides are offered, and before operating the ride each day that rides are offered to the public at the location.

Sec. 761.015. **RIDE REGISTRATION.** Prohibits a mobile amusement ride from being operated in this state unless the ride is registered with the department. Provides that the annual mobile amusement ride registration fee is \$50 unless the commissioner by rule sets a higher fee. Requires a person registering a mobile amusement ride to provide to the department the name, address, and telephone number of the mobile amusement ride owner, and the make, model, and serial number of the mobile amusement ride being registered.

Sec. 761.016. **INJURY OR DEATH INVOLVING A RIDE.** Requires the operator, if an

injury or death occurs during the installation, maintenance, operation, or inspection of a mobile amusement ride, to file with the department a report on a form prescribed by the commissioner, providing the name of any injured party, a description of how the incident occurred, the name of each operator, and the make, model, and manufacturer of the mobile amusement ride. Provides that this section applies to an injury or death that occurs outside the state if the operator is authorized to operate mobile amusement rides in this state. Requires the operation of the mobile amusement ride, if an incident that is required to be reported under this section results in the death of any person, to be terminated immediately and prohibits it from being resumed until the commissioner determines, after a department investigation, that operation of the mobile amusement ride does not pose a significant risk of serious injury. Authorizes the commissioner to impose reasonable conditions as necessary for the safe operation of a ride before the resumption of the operation of a ride under this subsection. Authorizes the commissioner, in the event of a death involving a mobile amusement ride, to suspend or terminate operation of similar mobile amusement rides operating in this state that the commissioner determines may cause injury or death.

Sec. 761.017. INVESTIGATION; LICENSE PROCEEDINGS; INJUNCTION.

Authorizes the commissioner or the commissioner's designated representative to enter the property during regular business hours without prior notice to inspect the mobile amusement ride or related equipment or to generally investigate any incident that resulted in serious injury or death, if the commissioner has good cause to believe that a mobile amusement ride is dangerous or that an incident involving a mobile amusement ride caused death, serious bodily injury, or property damage or that an operator is not in compliance with this chapter. Authorizes the commissioner to bring suit in a district court in Travis County or in the county in which a violation or threatened violation of this chapter or a rule adopted under this chapter occurs. Requires the attorney general to represent the commissioner in the suit. Provides that the commissioner is entitled to appropriate injunctive relief to prevent a violation or threatened violation of this chapter or a rule adopted under this chapter.

Sec. 761.018. CRIMINAL PENALTIES. Provides that a person commits an offense if the person violates or fails to comply with this chapter. Provides that except as provided by this section, an offense under this section is a Class B misdemeanor. Provides that an offense under Section 761.010 is a Class A misdemeanor, unless the offense is a repeat offense or involves injury or death, in which case it is a third degree felony.

SECTION 2. Amends the heading to Chapter 2151, Occupations Code, to read as follows:

CHAPTER 2151. REGULATION OF AMUSEMENT PARK RIDES

SECTION 3. Amends Section 2151.001, Occupations Code, to authorize this chapter to be cited as the Amusement Park Ride Safety Inspection and Insurance Act.

SECTION 4. Amends Section 2151.002, Occupations Code, to define "amusement park" and redefine "Class A amusement ride."

SECTION 5. Amends Chapter 2151A, Occupations Code, by adding Section 2151.003, to provide that this chapter applies only to amusement rides operated at an amusement park.

SECTION 6. Amends Section 2151.151, Occupations Code, by deleting a reference "Section 2151.1021" regarding rules adopted that allow for certain individuals to seek an injunction against a person operating an amusement ride.

SECTION 7. Amends Chapter 2151D, Occupations Code, by adding Section 2151.1525, as follows:

Sec. 2151.1525. PROHIBITION OF AMUSEMENT RIDE OPERATION. Authorizes a municipal, county, or state law enforcement official, except as provided this section, to immediately prohibit operation of an amusement ride under certain circumstances. Prohibits a person, if the operation of an amusement ride is prohibited under this section, from operating the amusement ride unless the operator presents official proof to certain law enforcement official of compliance with Section 2151.101, or the commissioner or commissioner's designee determines that the operator had filed with the board the necessary documents required by Section 2151.101 on the date the operation was prohibited. Prohibits a person, if on the date an amusement ride's operation is prohibited under this section the amusement ride is not in compliance with Section 2151, from operating the amusement ride until the person complies with Section 2151.101. Prohibits a person, if on the date an amusement ride's operation is prohibited under this section the amusement ride is in compliance with Section 2151.101, from operating the amusement ride until certain requirements are met. Provides that this section does not apply to an amusement ride operated at an amusement park that was attended by more than 200,000 customers in the year preceding the inspection under 2151.152(b).

SECTION 8. Amends Section 2151.153(a), Occupations Code, to delete Section 2151.1526 from the list of sections with which a person is required to comply. Makes a conforming change.

SECTION 9. Amends Section 49.01(6), Penal Code, to redefine "mobile amusement ride."

SECTION 10. Repealers: Article 21.60, Section 2(6), Insurance Code; Article 21.60, Section 4(f), Insurance Code; and Article 21.60, Sections 10(k), (l), and (m), Insurance Code. {Note: These three articles were repealed by Acts 1999, 76th Legislature.}

SECTION 11. Provides that the following sections of the Occupations Code, as added by the Act of the 77th Legislature, Regular Session, 2001, relating to nonsubstantive additions to and corrections in enacted codes, are repealed:

- Section 2151.002(6), Definitions;
- Section 2151.1021, INSPECTION REQUIREMENTS FOR MOBILE AMUSEMENT RIDES;
- 2151.1526, PROHIBITION OF MOBILE AMUSEMENT RIDE OPERATION.

SECTION 12. Provides that on January 1, 2002, the regulation of mobile amusement rides formerly administered by the Texas Department of Insurance is transferred to the commissioner of licensing and regulation. Provides that all money, records, property, and equipment in the custody of the Texas Department of Insurance on December 31, 2001, for the regulation of mobile amusement rides shall be transferred to the custody of the commissioner of licensing and regulation on January 1, 2002.

SECTION 13. Provides that in accordance with Section 311.031(c), Government Code, which gives effect to a substantive amendment enacted by the same legislature that codifies the amended statute, the text of Sections 2151.002, 2151.151, and 2151.153, Occupations Code, as set out in this Act, gives effect to changes made by Sections 1, 4, and 6, Chapter 1364, Acts of the 76th Legislature, Regular Session, 1999. Provides that to the extent of any conflict, this Act prevails over another Act of the 77th Legislature, Regular Session, 2001, relating to nonsubstantive additions and corrections in enacted codes.

SECTION 14. Effective date: January 1, 2002, except as provided by Subsection (b).

- (b) Provides that Sections 761.002, 761.003, 761.004, 761.005, and 761.008, Health and Safety Code, as added by this Act, take effect September 1, 2001. Makes application of this Act prospective.

(c) Provides that an offense committed on or after January 1, 2002 is covered by this Act.

(d) Provides that an offense committed before January 1, 2002, is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before that date.