

## RÉSUMÉ DIGEST

**ACT 462 (HB 1133)**

**2016 Regular Session**

**Berthelot**

New law provides relative to the Amusement Rides Safety Law and makes extensive changes to existing law and repeals provisions of prior law.

New law provides that the purpose of the Amusement Rides Safety Law is to regulate the testing, inspection, and operation of inflatable amusement devices, amusement attractions, and amusement rides. Prohibits the use of such devices, attractions, and rides when they have not been properly registered, have not received a proper and timely certificate of inspection, and have not received a set-up inspection.

Existing law (R.S. 40:1596.2) provides that the "assistant secretary" of the Dept. of Public Safety in charge of the office of state fire protection is commonly known as the "state fire marshal".

New law changes all "assistant secretary" references within the Amusement Rides Safety Law to the "fire marshal" or "office of state fire marshal".

New law authorizes the state fire marshal to administer and enforce the Amusement Rides Safety Law and to adopt rules and regulations which he considers necessary for such administration and enforcement.

Existing law and new law authorize the fire marshal to adopt rules in accordance with the Administrative Procedure Act (APA) to establish standards for the installation, repair, maintenance, use, operation, and inspection of amusement attractions and rides for the protection of the public. Authorize the fire marshal to adopt rules based upon generally accepted engineering standards. New law adds "inflatable amusement device" to the provisions of existing law and otherwise retains existing law.

New law authorizes the fire marshal to charge and collect certain fees as provided in new law. Requires procedures for the imposition of fines and appeals of such fines to be governed in accordance with the APA.

Existing law provides certain definitions particular to the Amusement Rides Safety Law. New law adds other certain definitions.

Prior law defined the terms "amusement ride", "certificate of inspection", and "operator". New law modifies the meaning of these terms.

Prior law defined the terms "air-supported structure", "assistant secretary", "department", and "inspector". New law repeals prior law.

New law adds certain defined terms including "certificate of registration", "inflatable amusement device", "NAARSO".

New law requires the owner of an inflatable amusement device, amusement attraction, or amusement ride to provide for the initial registration of such device, attraction, or ride. Requires a registration application, a certain certificate of inspection, and a copy of certain general liability insurance to be submitted to the fire marshal. Further requires the annual registration renewal of such devices, attractions, and rides.

Prior law required every air-supported structure, amusement attraction or ride to be inspected and have a certificate of inspection issued by the assistant secretary.

New law requires certain 3rd-party inspection of inflatable amusement devices, amusement attractions, and amusement rides. Prohibits the operation of such device, attraction, or ride unless a respective certificate of inspection has been provided by a 3rd-party inspector and a certificate of registration has been issued by the fire marshal.

New law requires a 3rd-party inspector to provide notice to the fire marshal when an inflatable amusement device, amusement attraction, or amusement ride does not comply with certain inspection requirements of new law. Provides for the fire marshal to subsequently

issue a cease and desist order to a respective operator, and such order shall not be lifted unless deficiencies have been remedied accordingly.

Prior law required at least 30 days notice to be given to the assistant secretary before commencing operation of any air-supported structure, amusement attraction, or ride. Imposed a \$100 fee upon any operator who failed to give the required notice. Imposed a \$100 fee for any change in schedule of location or date that occurred less than 14 days prior to the commencement of operation.

New law requires an operator to notify the fire marshal at least 5 days prior to commencing the operation of an amusement ride or amusement attraction. Assesses a \$250.00 fine per ride or attraction if the operator notifies the fire marshal less than 5 days prior to operation. Further assesses a \$250.00 fine per ride or attraction if the operator notifies the fire marshal of a change in date or location less than 5 days prior to operation. New law applies to inflatable amusement devices, except the fine for respective late notices to the fire marshal changes from \$250.00 to \$200.00 for each inflatable amusement device.

New law authorizes the fire marshal or his designee to inspect all inflatable amusement devices, amusement rides, and amusement attractions within the duration of the event at which such device, ride, or attraction is operated. Requires the fire marshal or his designee to provide an inspection of the device, ride, or attraction if such device, ride, or attraction is operating at a fixed location for more than 1 year.

New law provides the fire marshal with free access to any premises in the state of La. where an inflatable amusement device, amusement ride, or amusement attraction is being installed, built, repaired, or operated. Authorizes the fire marshal to publish a listing of all noncompliant operators and make such list available to the public upon written demand.

New law requires an operator to submit certain documents during a fire marshal inspection or audit.

With respect to inflatable amusement devices, new law applies to the those inflatable amusement devices that are all of the following: (1) Open to the public, (2) Located on grounds other than those of a 1- or 2-family dwelling, and (3) Co-located with other amusements, attractions, or rides.

New law provides for set-up inspections. Requires an owner or operator to have a set-up inspection conducted on all inflatable amusement devices, amusement attractions, and amusement rides at least once prior to their operation at each event. Provides for the set-up inspection to be conducted by a 3rd-party inspector or an employee of the owner or operator who is specially trained to perform a set-up inspection.

New law provides that if an inflatable amusement device, amusement attraction, or amusement ride complies with the requirements of a set-up inspection, the 3rd-party inspector or set-up inspector is required to affix a tag to such device, attraction, or ride. Provides that if such device, attraction, or ride is not in compliance with the requirements of a set-up inspection, the 3rd-party inspector or set-up inspector is required to cease operation of such device, attraction, or ride and provide notice to the fire marshal within 2 hours of the determination of noncompliance. Requires the respective inspector to affix a tag to the device, attraction, or ride indicating its noncompliance.

New law prohibits a person or firm from engaging in the testing and inspection or operation of an inflatable amusement device, amusement attraction, or amusement ride unless the person or firm holds a current and valid license as provided in new law.

New law prohibits a person or firm from aiding, abetting, facilitating, or otherwise assisting any unlicensed person or firm in testing and inspecting or operating, when such person or firm knew or should have known the latter person or firm was unlicensed.

New law prohibits a person or firm from testing and inspecting an inflatable amusement device, amusement attraction, or amusement ride if such person or firm is also the owner or operator of the device, attraction, or ride.

New law prohibits a 3rd-party inspector from engaging in 3rd-party inspections unless the inspector has licensed engineering experience in materials testing or certain other certifications as required in new law.

New law authorizes the fire marshal to adopt administrative rules allowing the owner of an inflatable amusement device, amusement attraction, or amusement ride, or an employee of the owner to perform minor service and repairs of such device, attraction, or ride. Requires the owner to document such service or repair and assume responsibility for all such service or repair.

The provisions of new law are inapplicable to an officer or employee of the U.S., the state of La., or any political subdivision of either, while engaged in the performance of his official duties within the course and scope of his employment.

New law requires a firm or operator applying for a firm license to obtain a license and endorsement to test and inspect or operate an inflatable amusement device, amusement attraction, or amusement ride. Requires an applicant for a 3rd-party inspection firm license or an operating firm license to submit a complete application including the names of certain persons, documentation that the firm is an entity duly authorized to conduct business within this state, certain documentation issued by the secy. of state if the firm is incorporated, regardless of whether such firm is physically located in this state, certain insurance information, and the payment of the required application fee.

New law requires, as a condition of licensure, a firm to be open for inspection by the fire marshal or his designated representative at any reasonable time for the purpose of observation and collection of facts and data relating to the proper enforcement of new law.

As a further condition of licensure, new law provides that a firm's or individual's acceptance of a license by the fire marshal is deemed as the firm's or individual's consent to submit to reasonable requests for documentation by the fire marshal or his designated representatives and to cooperate in lawful investigations. Provides that a firm's or individual's refusal to cooperate with any lawful investigation by the fire marshal is subject to any applicable penalty prescribed in new law, including suspension or revocation of a license.

New law prohibits a person acting on behalf of a firm to refuse the admittance of the fire marshal or his designated representative to an operating location or its business location where the firm keeps records. Provides that a firm physically located outside of the state of La. may be charged for the travel expenses of the fire marshal to conduct such an inspection.

New law requires a firm to clearly display its license in a conspicuous location at its place of business. Requires the designated agent of a firm or an individual to notify the fire marshal within 10 days of a change in the business address of the firm, or a change in ownership or interest in the firm, and in the case of an individual, a change that constitutes separation from an employer or change in employer.

New law requires an individual to apply for and obtain a license and the relevant endorsement to inspect and test or operate an inflatable amusement device, amusement attraction, or amusement ride. Requires an individual license holder to maintain his license on his person while engaging in such activity and to present his license for inspection upon demand of any employee of the office of state fire marshal, a fire department, or any law enforcement officer.

New law prohibits an individual licensed as provided in new law from contracting his services as an independent contractor or agent with any other firm, whether such firm is engaged in testing and inspection or operation.

New law requires an individual to meet all certification, continuing education, training, and testing requirements as established in new law and any related adopted rule or regulation.

New law requires the attainment of a license and respective endorsement to perform the set-up inspection of an inflatable amusement device, amusement attraction, or amusement ride. Authorizes employees of the owners or operators of such a device, attraction, or ride to become licensed to perform the set-up inspection.

New law provides the fire marshal with certain rights and authorities, including but not limited to the authority to formulate and administer certain necessary rules, including rules pertaining to the evaluation of qualifications and examinations of persons and firms, the authority to issue certain licenses, to decrease limits of insurance coverage and authorize acceptance of surplus lines, and the authority to conduct inspections, investigations, and audits.

New law provides that licenses may be revoked or suspended after notice and hearing in accordance with the APA and upon a finding that a person or firm did any of the following: (1) Willfully violated any provision of new law, (2) Used deceit or false or misleading information to obtain any certificate or license issued as provided in new law, (3) Demonstrated professional incompetence or gross negligence, or (4) Assisted any person attempting to evade the provisions of new law.

Prior law provided for fees for inspection certificates, inspections, and the registration and commissioning of inspectors. New law repeals prior law.

New law authorizes the fire marshal to assess and collect certain fees. Fees for the registration of each inflatable amusement device, amusement attraction, or amusement ride are as follows:

(1) Initial Registration Fee:

(a) Inflatable amusement device: \$100.00

(b) Child or "Kiddie" amusement attraction or amusement ride: \$100.00

(c) Adult amusement attraction or amusement ride: \$200.00

(2) Annual Renewal Fee:

(a) Inflatable amusement device: \$100.00

(b) Child or "Kiddie" amusement attraction or amusement ride: \$100.00

(c) Adult amusement attraction or amusement ride: \$200.00

New law provides for firm license fees as follows:

(1) Initial Fee:

(a) Inspection endorsement: \$500.00

(b) Operation endorsement: \$500.00

(2) Renewal Fee:

(a) Inspection endorsement: \$100.00

(b) Operation endorsement: \$100.00

New law provides licensing fees for an individual's license as follows:

(1) Initial Fee:

(a) 3rd-party inspector endorsement: \$250.00

(b) Operator or Owner endorsement: \$250.00

(c) Set-up inspector endorsement: \$250.00

(d) Qualifier endorsement: \$1,000.00

(2) Renewal Fee:

(a) 3rd-party inspector endorsement: \$50.00

(b) Operator or Owner endorsement: \$50.00

(c) Set-up inspector endorsement: \$50.00

(d) Qualifier endorsement: \$100.00

New law provides that licenses are valid for 1 year, unless a multi-year license is created. Requires a license to be renewed by the license holder within the 30 days prior to the license expiration date. Authorizes the fire marshal to create a prorated fee system to allow employee license renewal dates to coincide with the firm license renewal date.

New law provides that a license not renewed within the 30 days prior to its expiration date is past due for renewal and subject to late fees. Requires the license holder to pay a late fee penalty of \$25.00 for a license renewed within the first 45 days past the license expiration

date. Requires the license holder to pay a late fee penalty of \$50.00 for a license renewed between 46 and 60 days past the license expiration date.

New law authorizes the fire marshal to suspend of a license if the license is not renewed within 60 days past its expiration date or if the license holder has not maintained the license.

New law provides that the cost to reinstate a suspended license is the cost of the respective license holder's initial fee plus \$20.00. Provides a \$20.00 fee for a duplicate or replacement firm or individual license, regardless of how many endorsements are carried. Further provides a cost of \$20.00 to transfer an individual license from one firm to another.

New law provides that certain funds are refundable, except when certain conditions apply as established by the fire marshal. Provides that no fees are associated with compliance inspections and audits performed by the fire marshal, unless indicated otherwise. Further requires all collected fees to be used exclusively for the operation and maintenance of the amusement rides and safety division within the office of state fire marshal.

New law prohibits a person, firm, 3rd-party inspector, or set-up inspector from engaging in certain acts including but not limited to the following: (1) The operation of an inflatable amusement device, amusement attraction, or amusement ride without a valid license, (2) Aiding and abetting an unlicensed individual, employee, or firm in the testing and inspection or operation of an inflatable amusement device, amusement attraction, or amusement ride, (3) Operating an inflatable amusement device, amusement attraction, or amusement ride contrary to new law, (4) Engaging in certain false, misleading, or deceptive practices, and (5) Failing to maintain certain valid licenses and insurance.

Prior law provided that if after inspection or investigation, the assistant secretary determined an amusement ride or attraction was in violation of any promulgated standard, or determined substantial probability of death or serious physical injury to the public from the continued use, a notice of violation was required to be given in writing to the operator of the amusement ride or attraction. New law repeals prior law.

Prior law required a copy of the notice to be attached to the amusement ride or attraction. Prohibited use of the amusement ride or attraction after issuance of the notice of violation. Provided that the notice of violation issued by the assistant secretary constituted a cease and desist order, the violation of which constituted a misdemeanor offense punishable by a fine of not more than \$1,000.00 and imprisonment for not more than 30 days or both. New law repeals prior law.

Prior law prohibited the notice from being removed until the amusement ride or attraction was made safe for public use. Required certain safeguards to be provided and the notice could not be removed except by the assistant secretary. New law repeals prior law.

New law requires a red tag to be attached to an inflatable amusement device, amusement ride, or amusement attraction when an inspection, investigation, or audit determines such device, ride, or attraction is in violation of any adopted rule or there may be a substantial probability of death or serious physical injury to the public from continued use. Provides that the red tag constitutes a cease and desist order prohibiting use of such device, ride, or attraction.

New law prohibits removal of the red tag unless the device, ride, or attraction is made safe for public use and the required safeguards are provided. Provides that the red tag shall be removed only by the fire marshal or his designee.

Prior law provided for certain judicial review of actions of the assistant secretary in accordance with the APA. New law repeals prior law.

Existing law requires certain insurance or a bond. Prohibits a "person" from operating an amusement attraction or ride unless the person has either a policy of insurance in an amount of not less than \$1,000,000.00 that provides certain coverage against the operator's liability for injury suffered by persons, or a bond in the amount of \$1,000,000.00, provided the aggregate liability of the surety does not exceed the face amount of the bond. New law retains existing law, but changes "person" to "owner or operator" and adds "inflatable amusement device" to the provisions of existing law.

Existing law applies to operators of "air-supported structures"; however, the policy of liability insurance or the bond required of such operators is an amount not less than \$300,000.00. New law changes the term "air-supported structures" to "inflatable amusement devices" but otherwise retains existing law.

Existing law requires certain verification of insurance coverage to be submitted to the assistant secretary. Requires an insurer or bond holder to notify the assistant secretary no less than 10 days prior to the cancellation of the required insurance policy or bond. New law changes "assistant secretary" to "fire marshal" but otherwise retains existing law.

Existing law requires an operator to provide to any sponsor, lessor, landowner, or other person responsible for the offering of an amusement ride or attraction for public use a copy of the required insurance policy or bond and the certificate of registration issued by the assistant secretary. New law changes "assistant secretary" to "fire marshal" and adds "inflatable amusement device" to the provisions of existing law, but otherwise retains existing law.

Prior law authorized the assistant secretary to assess a civil penalty of not more than \$250.00 for each violation of prior law or adopted rules and regulations. Each day on which a violation occurred constituted a separate offense. Provided for penalties to be assessed through certain adjudicatory hearings. Authorized the assistant secretary to institute civil proceedings to enforce the rulings. New law repeals prior law.

New law provides that if the fire marshal finds that any person, operator, or firm has violated any provision of new law, he may impose a fine in an amount not to exceed \$5,000.00 for each violation. Provides that each day on which the violation occurs is considered a separate offense.

Existing law authorizes the assistant secretary to institute civil proceedings seeking certain injunctive relief. Authorizes the assistant secretary to assess civil penalties attributable to the operator of an amusement ride or attraction to the owner or lessee of the site on which the amusement ride or attraction is located, if the owner or lessee of the site fails to reasonably determine that the operator of the amusement ride or attraction is in proper compliance with the provisions of existing law. New law changes "assistant secretary" to "fire marshal" and adds "inflatable amusement device" to the provisions of existing law, but otherwise retains existing law.

New law empowers the fire marshal, in addition to or in lieu of administrative sanctions and civil penalties, to issue a cease and desist order to any person, operator, or firm engaged in any activity, conduct, or practice constituting a violation of new law. Provides that if such person, operator, or firm served with a cease and desist order does not cease and desist the prohibited activity, conduct, or practice, the fire marshal may seek a writ of injunction. Further requires the court to issue a temporary restraining order upon certain showings by the fire marshal and requires a permanent injunction in due course, after a certain hearing.

New law provides that a temporary restraining order, preliminary injunction, or permanent injunction issued according to new law is not subject to being released upon bond.

New law authorizes the fire marshal to demand from the defendant a penalty of \$50.00 per day for each violation, reasonable attorney fees, and court costs. Provides that judgment for the penalty, attorney fees, and court costs may be rendered in the same judgment in which the injunction is made final.

Existing law exempts all of the following from the provisions of existing law:

(1) Certain non-mechanized playground equipment including but not limited to swings, seesaws, stationary spring-mounted animal features, underpropelled merry-go-rounds, climbers, slides, trampolines, swinging gates, and physical fitness devices, except where an admission fee is charged for usage or an admission fee is charged to areas where such equipment is located.

(2) An amusement attraction or ride owned and operated by a nonprofit religious, educational, or charitable institution or association if such attraction or ride is located within

a building subject to inspection by the assistant secretary or certain local governmental subdivisions of the state.

(3) Coin-operated mechanical devices occupying less than 36 square feet of floor space.

(4) Non-motorized rides and attractions.

New law retains existing law, but changes "assistant secretary" to "fire marshal" and adds "inflatable amusement device" to the exemptions in existing law.

The provisions of existing law do not prevent a local governmental subdivision from licensing or regulating any amusement attraction, ride, carnival, or circus as otherwise provided by law. New law adds "inflatable amusement device" to the provisions of existing law.

Existing law authorizes the assistant secretary to waive the requirement for an amusement attraction, ride, or any respective component part to be inspected prior to operation in this state if an operator gives satisfactory proof to the assistant secretary that such attraction, ride, or respective component part has passed an inspection, conducted by a public agency, whose inspection standards and requirements are at least equal to the requirements and standards established in existing law. New law changes "assistant secretary" to "fire marshal" and adds "inflatable amusement device" to the provisions of existing law, but otherwise retains existing law.

New law adds the term "firm" to existing law (R.S. 40:1485.2) within the Carnival and Amusement Rider Safety Act. New law defines a firm as a sole proprietorship, corporation, limited liability company, or similar type of business entity. New law makes other technical changes but otherwise retains existing law.

New law provides that the entirety of the Amusement Rides Safety Law is applicable to the entirety of the Carnival and Amusement Rider Safety Act.

Effective August 1, 2016.

(Amends R.S. 40:1484.1-1484.28, 1485.2(intro. para.), (2), (3), (4), and (5); Adds R.S. 40:1485.2(6) and 1485.9)