
DIGEST

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HB 1133 Reengrossed

2016 Regular Session

Berthelot

Abstract: Revises provisions relative to inflatable amusement devices, amusement attractions, and amusement rides.

Proposed 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, and to prohibit 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.

Present 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".

Proposed law changes all references in present law from the "assistant secretary" to the "fire marshal" or "office of state fire marshal".

Proposed law authorizes the state fire marshal (fire marshal) to administer and enforce the provisions of proposed law and to adopt rules and regulations which he considers necessary for such administration and enforcement.

Present law authorizes the assistant secretary 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. Further authorizes the assistant secretary to adopt rules based upon generally accepted engineering standards including but not limited to engineering force stresses, safety devices, and preventive maintenance. Proposed law changes "assistant secretary" to the "fire marshal" and adds "inflatable amusement device". Proposed law otherwise retains present law.

Proposed law authorizes the fire marshal to charge and collect certain fees as provided in proposed law and requires procedures for the imposition of fines and appeals of such fines to be governed in accordance with the Administrative Procedure Act (APA).

Present law and proposed law provide for certain definitions.

Present law defines "amusement ride", "certificate of inspection", and "operator". Proposed law modifies these present law definitions.

Present law defines "air-supported structure", "assistant secretary", "department", and "inspector". Proposed law removes present law.

Proposed law adds other certain definitions.

Proposed 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.

Proposed law requires certain third-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 third-party inspector and a certificate of registration has been issued by the fire marshal.

Proposed law requires a third-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 proposed 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.

Proposed law requires an operator to notify the fire marshal at least 5 days prior to commencing the operation of an amusement attraction or amusement ride. 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. Proposed 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.

Proposed law authorizes the fire marshal or his designee to inspect all inflatable amusement devices, rides, and attractions during 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.

Proposed law provides the fire marshal with free access to any premises in this state 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.

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

With respect to inflatable amusement devices, proposed law applies to the those inflatable amusement devices that are all of the following: (1) Open to 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.

Proposed 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 third-party inspector or an employee of the owner or operator specially trained to perform a set-up inspection.

Proposed law provides that if an inflatable amusement device, amusement attraction, or amusement ride complies with the requirements of a set-up inspection, the third-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 third-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.

Proposed 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 proposed law.

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

Proposed 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 same.

Proposed law prohibits a third-party inspector from engaging in third-party inspections unless the inspector has certain licensed engineering experience in materials testing or certain other certification as required in proposed law.

Proposed 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 proposed 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.

Proposed 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. Further requires an applicant for a third-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 secretary of state if the firm is incorporated, regardless of whether such firm is physically located in the state, certain insurance information, and the payment of the required application fee.

Proposed law requires, as a condition of licensure, for 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 proposed law.

As a further condition of licensure, proposed 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 or individual's refusal to cooperate with any lawful investigation by the fire marshal is subject to any applicable penalty prescribed in proposed law, including suspension or revocation of a license.

Proposed 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.

Proposed 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 of or interest in the firm, and in the case of an individual, a change that constitutes separation from an employer or change in employer.

Proposed 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.

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

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

Proposed 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.

Proposed 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.

Proposed 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 proposed law, (2) Used deceit or false or misleading information to obtain any certificate or license issued as provided in proposed law, (3) Demonstrated professional incompetence or gross negligence, or (4) Assisted any person attempting to evade the provisions of proposed law.

Present law (R.S. 40:1484.4 and 1484.5) provides for certain inspections by the assistant secretary, certain certificates of inspection, and certain fees. Proposed law removes present law.

Proposed 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

Proposed 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

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

(1) Initial Fee:

- (a) Third-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) Third-Party inspector endorsement: \$50.00
- (b) Operator or Owner endorsement: \$50.00
- (c) Set-up inspector endorsement: \$50.00
- (d) Qualifier endorsement: \$100.00

Proposed 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.

Proposed 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.

Proposed law provides for the fire marshal's suspension 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.

Proposed 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.

Proposed 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.

Proposed law prohibits a person, firm, third-party inspector, or set-up inspector from engaging in certain acts including but not limited to: (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, 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 proposed law, (4) Engaging in certain false, misleading, or deceptive practices, and (5) Failing to maintain certain valid licenses and insurance.

Present law provides if after inspection or investigation of any amusement ride or attraction, the

assistant secretary determines such ride or attraction is in violation of any promulgated standard or determines substantial probability of death or serious physical injury to the public from the continued use of such ride or attraction, a notice of violation is required to be given in writing to the operator of the amusement ride or attraction. Proposed law removes present law.

Present law requires a copy of the notice to be attached to the amusement ride or attraction. Provides that after the notice of violation is issued, use of the amusement ride or attraction is prohibited. Provides that the the notice of violation issued by the assistant secretary constitutes a cease and desist order, the violation of which constitutes a misdemeanor offense punishable by a fine of not more than \$1,000.00 and imprisonment for not more than 30 days or both. Proposed law removes present law.

Present law provides that the notice may not be removed until the amusement ride or attraction is made safe for public use and the required safeguards are provided. The notice may not be removed except by the assistant secretary. Proposed law removes present law.

Proposed 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 standard adopted rule or there may be a substantial probability of death or serious physical injury to the public from continued use. Provides for the red tag to constitute a cease and desist order prohibiting use of such device, ride, or attraction.

Proposed 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 for the red tag to be removed only by the fire marshal or his designee.

Present law provides for certain judicial review of actions of the assistant secretary in accordance with the APA. Proposed law deletes present law.

Present law requires certain insurance or a bond. Prohibits a person from operating an amusement attraction or amusement 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. Proposed law retains present law but changes person to "owner or operator" and adds "inflatable amusement device" to the provisions of present law.

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

Present 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. Proposed law changes "assistant

secretary" to "fire marshal" but otherwise retains present law.

Present 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. Proposed law changes "assistant secretary" to "fire marshal" and adds "inflatable amusement device" to the provisions of present law. Proposed law otherwise retains present law.

Present law authorizes the assistant secretary to assess a civil penalty of not more than \$250.00 for each violation of present law or adopted rules and regulations. Provides that each day on which a violation occurs is considered a separate offense. Provides for penalties to be assessed through certain adjudicatory hearings. Authorizes the assistant secretary to institute civil proceedings to enforce the rulings of the assistant secretary. Proposed law removes present law.

Proposed law provides that if the fire marshal finds that any person, operator, or firm has violated any provision of proposed 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.

Present 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 failed to reasonably determine that the operator of the amusement ride or attraction is in proper compliance with the provisions of present law. Proposed law changes "assistant secretary" to "fire marshal" and adds "inflatable amusement device" to the provisions of present law. Proposed law otherwise retains present law.

Proposed 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 proposed 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 enjoining such prohibited activity, conduct, or practice. 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.

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

Proposed 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 penalty, attorney fees, and court costs may be rendered in the same judgment in which the injunction is made final.

Present law authorizes the assistant secretary to assess civil penalties attributable to the operator of an amusement ride or amusement attraction to the owner or lessee of the site on which the

amusement attraction or amusement ride is located, if the owner or lessee of the site failed to reasonably determine that the operator of such ride or attraction is in proper compliance as provided in present law. Proposed law changes "assistant secretary" to "fire marshal" and adds "inflatable amusement device" to the provisions of present law. Proposed law otherwise retains present law.

Present law provides provisions to exempt all of the following from the provisions of present 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.

Proposed law changes "assistant secretary" to "fire marshal" and adds "inflatable amusement device" to the exemption provisions of present law. Proposed law otherwise retains present law.

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

Present 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 present law. Proposed law changes "assistant secretary" to "fire marshal" and adds "inflatable amusement device" to the provisions of present law. Proposed law otherwise retains present law.

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

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

(Amends R.S. 40:1484.1-1484.28, 1485.2(1)(intro. para.), (2), (3), (4), and (5); Adds R.S.

40:1485.2(6) and 1485.9)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Commerce to the original bill:

1. Include a designee of the fire marshal as a proper person to perform certain actions in proposed law.
2. Modify the definition of "operator" within proposed law.
3. Clarify that a third-party inspector provides the certificate of inspection and the fire marshal issues the certificate of registration.
4. Modify terminology with respect to certain certificates issued by the secretary of state that are required to be filed with the fire marshal.
5. Require a third-party inspector to submit a certificate of inspection to the fire marshal after certain inspections.
6. Provide the fire marshal with sole authority to indicate the remediation of certain deficiencies.
7. Require an operator to submit the set-up inspection report and other certain documentation to the fire marshal or his designee.
8. Clarify the distinction between license endorsements for inspection and operation.
9. Reorganize certain language in proposed law to improve readability.
10. Make technical corrections.

The House Floor Amendments to the engrossed bill:

1. Modify certain language of proposed law to improve clarity and readability.
2. Make technical corrections.