

BILL ANALYSIS

C.S.H.B. 2289
By: Ortega
Insurance
Committee Report (Substituted)

BACKGROUND AND PURPOSE

There are concerns that state law regulating amusement park rides does not adequately protect the safety and well-being of Texans, especially children. While the Texas Department of Insurance (TDI) is required to administer the Amusement Ride Safety Inspection and Insurance Act, it has been reported that TDI actually has no inspection or enforcement authority over these rides. Reports indicate that this gap in TDI's authority has resulted in regulatory ambiguity, allowing negligent owners of dangerous amusement rides to continue to operate in Texas without penalty. C.S.H.B. 2289 seeks to address this issue by transferring regulation of amusement rides from TDI to the Texas Department of Licensing and Regulation.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTIONS 2 and 14 of this bill.

ANALYSIS

C.S.H.B. 2289 provides for the transfer of the following from the Texas Department of Insurance (TDI) to the Texas Department of Licensing and Regulation (TDLR):

- the powers, duties, functions, programs, and activities relating to the licensing and regulation of amusement rides;
- any obligations and contracts directly related to implementing those powers, duties, functions, programs, and activities;
- all property and records in the custody of TDI that are related to those powers, duties, functions, programs, and activities; and
- all funds appropriated by the legislature for those powers, duties, functions, programs, and activities.

C.S.H.B. 2289 establishes that the rules, policies, procedures, and decisions of the commissioner of insurance under the Amusement Ride Safety Inspection and Insurance Act are continued in effect as rules, policies, procedures, and decisions of the Texas Commission of Licensing and Regulation (TCLR) until superseded by a rule or other appropriate action of TCLR.

C.S.H.B. 2289, effective September 1, 2019, authorizes TDI and TDLR to enter into a memorandum of understanding that identifies in detail the applicable powers and duties that are transferred between TDI and TDLR and that establishes a plan for the identification and transfer

of the records, personnel, property, and unspent appropriations of TDI that are related to the regulation of amusement rides.

C.S.H.B. 2289 amends the Occupations Code to revise certain provisions of the Amusement Ride Safety Inspection and Insurance Act to reflect the transfer made by the bill and to clarify the duties of TCLR, TDLR, and the executive director of TDLR under the act. The bill clarifies that TCLR or the executive director may request the attorney general or the attorney general's agent to seek an injunction against a person operating an amusement ride in violation of the act or related rules. The bill authorizes TDLR to determine compliance with the act, institute an action in a court of competent jurisdiction to enforce the act, and to enter and inspect without notice any amusement ride to ensure public safety. The bill authorizes the executive director to immediately prohibit operation of any amusement ride under certain circumstances.

C.S.H.B. 2289 establishes the amusement ride regulation advisory board to provide advice and recommendations to TCLR and TDLR on technical matters relevant to the administration of the Amusement Ride Safety Inspection and Insurance Act, including providing advice on rulemaking. The bill provides for the composition and administration of the advisory board and exempts the advisory board from certain statutory provisions relating to state agency advisory committees. The bill requires TCLR, in consultation with the advisory board, to adopt all rules necessary to administer and enforce the act.

C.S.H.B. 2289 changes the cap on the fees established for each amusement ride covered by the Amusement Ride Safety Inspection and Insurance Act from \$40 per year to the greater of \$40 per year or an annual amount determined by TCLR after consultation with the advisory board. The bill restricts the use of such fees to administration of the act. The bill removes language establishing that an operator of an amusement ride is not required to file a report describing governmental actions taken in any state relating to that particular ride in any quarter in which no reportable governmental action was taken.

C.S.H.B. 2289 authorizes the executive director of TDLR to issue an emergency order if the 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 the Amusement Ride Safety Inspection and Insurance Act or a rule adopted by TCLR or an order issued by the executive director under the act. The bill authorizes the executive director to issue the emergency order with or without notice and a hearing as required by the circumstances and sets out procedures for a hearing before the State Office of Administrative Hearings if an emergency order is issued without a hearing. The bill authorizes TCLR by rule to prescribe procedures for the determination and appeal of an emergency order issued under these provisions.

EFFECTIVE DATE

Except as otherwise provided, September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2289 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes provisions that:

- establish the amusement ride regulation advisory board;
- require TCLR to adopt all rules necessary to administer and enforce the Amusement Ride Safety Inspection and Insurance Act in consultation with the advisory board;
- change the cap on the fees established for each amusement ride covered by the act and restrict the use of such fees to administration of the act;

- provide for the issuance of emergency orders by the executive director of TDLR under certain circumstances; and
- remove language establishing that an operator of an amusement ride is not required to file a report describing governmental actions taken in any state relating to that particular ride in any quarter in which no reportable governmental action was taken.

The substitute revises provisions relating to enforcement of the Amusement Ride Safety Inspection and Insurance Act by:

- authorizing TCLR to request the attorney general or the attorney general's agent to seek an injunction against a person operating an amusement ride in violation of the act or related rules; and
- changing from the executive director of TDLR to TDLR the entity authorized to determine compliance with the act, institute an action in a court of competent jurisdiction to enforce the act, and enter and inspect any amusement ride without notice.

The substitute changes the date of transfer and the effective date of the bill's provisions other than the provisions relating to the memorandum of understanding from January 1, 2020, to September 1, 2021.