

CHAPTER 832

H.B. No. 1032

AN ACT

relating to the civil liability of certain owners, lessees, or occupants of real property, and to liability insurance limits for certain amusement rides and attractions.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 2, Article 21.60, Insurance Code, is amended by amending Subdivision (1) and by adding Subdivisions (3) and (4) to read as follows:

(1) "Amusement ride" means any mechanical device or devices that carry or convey passengers along, around, or over a fixed or restricted route or course or within a defined area for the purpose of giving its passengers amusement, pleasure, or excitement, but such term does not include:

(A) any [~~single-passenger~~] coin-operated ride that is manually, mechanically, or electrically operated and customarily placed in a public location and that does not normally require the supervision or services of an operator;[,] or

(B) nonmechanized playground equipment, including but not limited to swings, seesaws, stationary spring-mounted animal features, rider-propelled merry-go-rounds, climbers, *playground* slides, trampolines, and physical fitness devices.

(3) "*Class A amusement ride*" means an amusement ride designed primarily for use by children 12 years of age or younger.

(4) "*Class B amusement ride*" means any amusement ride not defined as a *Class A amusement ride*.

SECTION 2. Section 4, Article 21.60, Insurance Code, is amended by amending Subsection (a) to read as follows:

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

(1) has the amusement ride inspected at least once annually by an insurer or a person with whom the insurer has contracted and obtains from that insurer or person a written certificate that the inspection has been made and that the amusement ride meets the standards for coverage and is covered by the insurance required by Subsection (2) of this section. If at any time the inspection reveals that an amusement ride does not meet the insurer's underwriting standards, the insurer shall so notify the owner or operator and in the event repair or replacement of equipment is required it shall be the responsibility of the owner or operator to make such repair or replacement before the amusement ride is offered for public use;

(2) has an insurance policy currently in force written by an insurance company authorized to do business in this state, a surplus lines insurer as defined by Article 1.14-2 of this code, or an independently procured policy subject to Article 1.14-1 of this code, in an amount of not less than \$100,000 [~~\$1-million~~] per occurrence with a \$300,000 annual aggregate for Class A amusement rides and an amount of not less than \$1,000,000 per occurrence for Class B amusement rides insuring the owner or operator against liability for injury to persons arising out of the use of the amusement ride;

(3) files with the board, in the manner required by this article, the inspection certificate and the insurance policy required by this section or a photocopy of such a certificate or policy authorized by the board; and

(4) files with each sponsor, lessor, landowner, or other person responsible for an amusement ride being offered for use by the public a certificate stating that the insurance required by Subdivision (2) of this section is in effect.

SECTION 3. Section 8, Article 21.60, Insurance Code, is amended to read as follows:

Sec. 8. INJUNCTIONS. The district attorney of each county in which an amusement ride is operated or, [~~the attorney general~~] on request of the commissioner of insurance, *the attorney general* or one of his agents may seek an injunction against any person operating an amusement ride in violation of this article.

SECTION 4. Section 9, Article 21.60, Insurance Code, is amended to read as follows:

Sec. 9. PENALTIES; LOCAL ENFORCEMENT. (a) A person commits an offense if he fails to comply with any requirement under Section 4 or 5 of this article.

(b) A sponsor, lessor, landowner, or other person responsible for an amusement ride being offered for use by the public commits an offense if he fails to provide the required information or provides false information under Section 6 of this article.

(c) An offense under this section is a Class C [~~B~~] misdemeanor.

(d) Each day a violation of this article is committed constitutes a separate offense.

(e) *A municipal or county law enforcement official may determine compliance with Section 4 or 5 of this article in conjunction with the board, and may institute an action in a court of competent jurisdiction to enforce this article.*

SECTION 5. Section 75.003(c), Civil Practice and Remedies Code, is amended to read as follows:

(c) This chapter *applies only to* [~~does not affect the liability of~~] an owner, lessee, or occupant of real property who:

(1) *does not charge for entry to the premises* [~~uses or permits the use of all or any part of the premises as a commercial recreational enterprise for profit~~]; or

(2) *charges for entry to the premises, but whose total charges collected in the previous calendar year for all recreational use of the entire premises of the owner, lessee, or occupant are not more than twice the total amount of ad valorem taxes imposed on the premises for the previous calendar year* [~~other than a charge against those who remove game from the premises in an amount reasonably necessary to replace the game~~].

SECTION 6. (a) This Act takes effect September 1, 1987, and applies to all policies delivered, issued for delivery, or renewed on or after that date. Policies delivered, issued for delivery, or renewed before September 1, 1987, are subject to the law as it existed before September 1, 1987.

(b) Section 5 of this Act applies only to an action commenced on or after the effective date of this Act.

(c) An action commenced before the effective date of this Act, other than an action included under Subsection (b) of this section, is governed with respect to the subject matter of this Act by the applicable law in effect before the effective date of this Act, and that law is continued in effect only for this purpose.

SECTION 7. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on April 27, 1987, by the following vote: Yeas 139, Nays 0, 1 present, not voting. Passed by the Senate on May 19, 1987, by the following vote: Yeas 30, Nays 0.

Approved June 18, 1987.

Effective Sept. 1, 1987.