

2017

HOUSE BILL NO 2389

By Committee on Federal and State Affairs

AN ACT concerning amusement rides; relating to the Kansas amusement ride act; amending K.S.A. 2016 Supp. 44-1601, 44-1602, 44-1603, 44-1604, 44-1607, 44-1610, 44-1613 and 44-1614 and repealing the existing sections.

*Be it enacted by the Legislature of the State of Kansas:*

New Section 1. (a) No amusement ride shall be operated in this state unless a valid permit for such ride has been issued by the department. The owner of an amusement ride shall make application for a permit for such amusement ride to the secretary on such form and in such manner as prescribed by the secretary. The application for a permit shall include, but is not limited to the following:

- (1) The name of the owner and operator of the amusement ride;
- (2) the location of the amusement ride;
- (3) proof of insurance;
- (4) certification of fabrication;

*A definition of this certification is necessary. I suggest that certification should consist of a signed and stamped letter of certification from a registered U.S. professional engineer, such letter stating that the engineer has reviewed the manufacturer's stress analysis, welding procedures, foundation calculations, restraints and control systems. The certification letter shall be submitted with copies of all of the above documents.*

- (5) certification of manufacturer's tested ride; and

*A definition of this certification is necessary. I suggest that certification should consist of a signed and stamped letter of certification from a registered U.S. professional engineer, such letter stating that the engineer has witnessed the testing of the manufacturer and was performed in compliance with the testing requirements of the ASTM F24 standards. The certification letter shall be submitted with copies of all of the above test protocol and test results documents.*

- (6) certification of employee training.

*A definition of this certification is necessary. I suggest that certification should consist of a signed statements of trainers and trainees. The certification submittal shall include a copy of the training documents used to qualify the employee for his respective position.*

(b) Each applicant shall submit a permit fee along with the application in an amount as follows:

- (1) For amusement rides erected at a permanent location, \$840; and
- (2) for amusement rides erected at a temporary location, \$100.

(c) Upon approval of an application and receipt of the required fee, the secretary shall issue a permit for the amusement ride. Such permit shall be valid for one year from the date of issuance. Any permit fee paid by an applicant shall be returned to the applicant if the application is denied.

(d) All fees received by the secretary pursuant to this section shall be remitted by the secretary to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

New Sec. 2. (a) The owner of an amusement ride shall have currently in force an insurance policy written by an insurance company authorized to do business in this state, or by a surplus lines insurer, in an amount of not less than \$100,000 per occurrence with a \$300,000 annual aggregate for amusement rides that are restricted solely for use by patrons aged 18 or over, and an amount of not less than \$1 million per occurrence for all other amusement rides insuring the owner or operator against liability for injury to persons arising out of the use of the amusement ride.

(b) Any state agency or political subdivision of the state shall have insurance or selfinsurance, or participation in a public entity self-insurance pool in accordance with K.S.A. 75-6111, and amendments thereto.

New Sec. 3. (a) (1) A patron, or a patron's parent or guardian on a patron's behalf, shall report in writing to the owner any injury sustained on an amusement ride before leaving the premises. Such report shall include:

(A) The name, address and phone number of the injured person;

(B) a full description of the incident, the injuries claimed, any treatment received and the location, date and time of the injury;

(C) the cause of the injury, if known; and

(D) the names, addresses and phone numbers of any witnesses to the incident.

(2) If a patron, or a patron's parent or guardian, is unable to file a report because of the severity of the patron's injuries, the patron or the patron's parent or guardian shall file the report as soon as reasonably possible.

(3) The failure of a patron, or the patron's parent or guardian, to report an injury under this subsection shall have no effect on the patron's right to commence a civil action.

*The owner shall prominently and in multiple locations, display signage explaining the patrons duty to report injuries and instructions on where and how to contact the owners representatives for immediate assistance and/or reporting forms.*

(b) The owner of an amusement ride shall notify the department of any *serious injury (NEED DEFINITION, SEE ASTM F747)*

reported by a patron, or any injury caused by a malfunction or failure of an amusement ride or caused by an operator or patron error **which impairs the function of an amusement ride. (THIS MAKES NO SENSE. IT DOES NOT SERVE THE PUBLIC INTEREST. IT IS A LOOPHOLE WHICH ALLOWS OWNERS TO AVOID REPORTING OF INJURIES IF THE INJURY DID NOT IMPAIR THE FUNCTION OF THE RIDE. INJURIES RARELY, IF EVER, IMPAIR THE FUNCTION OF A RIDE.** Such notification shall be submitted to the department within 72 hours of the time that the operator becomes aware of the injury.

(c) If an serious injury occurs, the equipment or conditions that caused the injury shall be preserved for the purpose of an investigation by the department unless an investigation is deemed unnecessary by the secretary.

**THE OWNER SHOULD BE REQUIRED TO REMOVE THE RIDE FROM SERVICE IMMEDIATELY, LOCK IT DOWN AND PRESERVE IT UNTIL THE DEPARTMENT DECIDES IF AN INVESTIGATION WILL BE INITIATED.**

Sec. 4. K.S.A. 2016 Supp. 44-1601 is hereby amended to read as follows: 44-1601. As used in this act:

(a) (1) "Amusement ride" means any mechanical or electrical device that carries or conveys 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, thrills or excitement and shall include, **ALL RIDES AND DEVICES INCLUDED UNDER ASTM F24 STANDARDS**, but not be limited to:

(A) Rides commonly known as ferris wheels, carousels, parachute towers, bungee jumping, reverse bungee jumping, ~~tunnels of love~~ **BOAT RIDES, ZIP LINES, INFLATABLE DEVICES, GO-KARTS, TRAMPOLINES** and roller coasters;

(B) equipment generally associated with winter activities, such as ski lifts, ski tows, jbars, t-bars, chair lifts and aerial tramways; and

(C) equipment not originally designed to be used as an amusement ride, such as cranes or other lifting devices, when used as part of an amusement ride.

(2) "Amusement ride" does not include:

(A) Games, concessions and associated structures;

(B) any single passenger coin-operated ride that: (i) Is manually, mechanically or electrically operated; (ii) is customarily placed in a public location; and (iii) does not normally require the supervision or services of an operator;

(C) nonmechanized playground equipment, including, but not limited to, swings, seesaws, stationary spring-mounted animal features, rider-propelled merry-go-rounds, climbers, slides, ~~trampolines, moon walks and other inflatable equipment~~ and physical fitness devices; or

(D) home-owned amusement rides.

(b) "Certificate of inspection" means a certificate, signed and dated by a qualified inspector, showing that an amusement ride has satisfactorily passed inspection by such inspector.

(c) "Department" means the department of labor.

(d) "Home-owned amusement ride" means an amusement ride owned by a not-forprofit entity and operated:

(1) Solely within a single county;

(2) by individuals on a volunteer basis; and

(3) for a period not to exceed 12 days within one calendar year.

**I SUGGEST THE DELETION OF THE "HOME OWNED" CATEGORY OF RIDES. IT WOULD EXPOSE GREAT NUMBERS OF AMUSEMENT RIDE PATRONS TO RISKS ON RIDES THAT MAY NOT BE INSPECTED OR PROPERLY MAINTAINED OR OPERATED BY UNQUALIFIED PERSONS. THIS EXEMPTION WOULD PERMIT STATE OR COUNTY FAIRS, CHURCHES, PRIVATE CLUBS, OR ANY "NON-PROFIT" FROM ALL SAFETY STANDARDS TO WHICH THIS REGULATION IS DIRECTED.**

(e) "Nondestructive testing" means the development and application of technical methods such as radiographic, magnetic particle, ultrasonic, liquid penetrant, electromagnetic, neutron radiographic, acoustic emission, visual and leak testing to:

(1) Examine materials or components in ways that do not impair the future usefulness and serviceability in order to detect, locate, measure and evaluate discontinuities, defects and other imperfections;

(2) assess integrity, properties and composition; and

(3) measure geometrical characters. **WHY IS THIS NDT PROVISION INSERTED HERE? WHAT IS THE RELEVENCE TO THE LIST OF COVERED RIDES?**

**I SUGGEST THE FOLLOWING DEFINITIONS BE PLACED IN THEIR OWN SECTION AND REFERENCE BE MADE TO ASTM F747.**

(f) "Operator" means a person actually **SUPERVISING**, engaged in or directly controlling the operations of an amusement ride.

(g) "Owner" means a person who owns, leases, controls or manages the operations of an amusement ride and may include the state or any political subdivision of the state.

(h) "Parent or guardian" means any parent, guardian or custodian responsible for the control, safety, training or education of a minor or an adult or minor with an impairment in need of a guardian or a conservator, or both, as those terms are defined by K.S.A. 59-3051, and amendments thereto.

(i) (1) "Patron" means any individual who is:

(A) Waiting in the immediate vicinity of an amusement ride to get on the ride;

(B) getting on an amusement ride;

(C) using an amusement ride;

(D) getting off an amusement ride; or

(E) leaving an amusement ride and still in the immediate vicinity of the ride.

(2) "Patron" does not include employees, agents or servants of the owner while engaged in the duties of their employment.

(j) "Person" means any individual, association, partnership, corporation, limited liability company, government or other entity.

(k) "Qualified inspector" means a person who holds a current certification or other evidence of qualification to inspect amusement rides, issued by a program specified by rules and regulations adopted under K.S.A. 2016 Supp. 44-1602, and amendments thereto (A) Is a **U.S.** licensed engineer and has completed at least two years of experience in the amusement ride field, consisting of at least one year of actual inspection of amusement rides for a manufacturer, government agency, amusement park, carnival or insurance underwriter, and an additional year of practicing any combination of amusement ride inspection, design, fabrication, installation, maintenance, testing, repair or operation; or (B) provides satisfactory evidence of completing a minimum of five years of experience in the amusement ride field, at least two years of which consisted of actual inspection of amusement rides for a manufacturer, government agency, amusement park, carnival or insurance underwriter, **UNDER THE SUPERVISION OF A "QUALIFIED INSPECTOR"**, and the remaining experience consists of any combination of amusement ride inspection, design, fabrication, installation, maintenance, testing, repair or operation.

(l) "Secretary" means the secretary of labor.

(m) "Serious injury" means an injury that results in:

(1) Death, dismemberment, significant disfigurement or permanent loss of the use of a body organ, member, function or system;

(2) a compound fracture; or

(3) other significant injury or illness that requires immediate admission and overnight hospitalization and observation by a licensed physician.

(n) "Sign" means any symbol or language reasonably calculated to communicate information to patrons or their parents or guardians, including placards, prerecorded messages, live public address, stickers, pictures, pictograms, guide books, brochures, videos, verbal information and visual signals.

Sec. 5. K.S.A. 2016 Supp. 44-1602 is hereby amended to read as follows: 44-1602. (a)

**The secretary shall adopt rules and regulations specifying programs that issue certification or other evidence of qualification to inspect amusement rides and that the secretary determines require education, experience and training at least equivalent to those required on the effective**

date of this act for a level 1 certification by the National Association of Amusement Ride Safety Officials, NAARSO. The secretary shall develop an inspection check list which shall be posted on the department web site.

To be eligible for certification as a **QUALIFIED INSPECTOR**, an applicant shall qualify as either a licensed engineer or as a non-engineer.

(1) To qualify as a licensed engineer, the applicant shall do all of the following:

(A) Provide satisfactory evidence that the applicant is a licensed engineer and has completed at least two years of experience in the amusement ride field, consisting of at least one year of actual inspection of amusement rides for a manufacturer, government agency, amusement park, carnival or insurance underwriter, and an additional year of practicing any combination of amusement ride inspection, design, fabrication, installation, maintenance, testing, repair, or operation.

(B) Provide any other information reasonably requested by the Division.

(2) To qualify as a non-engineer, the applicant shall do all of the following:

(A) Provide satisfactory evidence of completing a minimum of five years of experience in the amusement ride field, at least two years of which consisted of actual inspection of amusement rides for a manufacturer, government agency, amusement park, carnival or insurance underwriter. The remaining experience may consist of any combination of amusement ride inspection, design, fabrication, installation, maintenance, testing, repair, or operation.

(B) Provide any other information reasonably requested by the Division.

(C) Produce a valid certificate from a QSI Training Program approved by the Division pursuant to section 344.11, evidencing the applicant's successful completion of 80-hour QSI certification training. For the purposes of this subsection, the training must have been completed within the past five years as of the time the application is made, but must not have been received earlier than January 1, 1999.

(b) No amusement ride shall be operated in this state unless such ride has a valid certificate of inspection. An amusement ride erected at a permanent location in this state shall be ~~self-inspected~~ inspected by a qualified inspector at least every 12 months. An amusement ride erected at a temporary location in this state shall ~~have been self-inspected~~ be inspected by a qualified inspector ~~within the preceding 30 days~~ upon reassembly prior to use by a patron. The certificate of an inspection ~~required by this subsection~~ shall be signed and dated by the inspector and shall be available to any person contracting with the owner for the amusement ride's operation. In addition, a visible inspection decal or other evidence of inspection shall be posted in plain view on or near the amusement ride, in a location where it can easily be seen.

(b) Inspections performed pursuant to this section shall be paid for by the insurance company issuing the liability insurance policy, or in the case of a state agency or political subdivision of the state, such governmental entity shall pay for the inspection.

(c) In addition to the annual inspection required by subsection(a), the operator of an amusement ride shall perform and record daily inspections of the amusement ride. The daily inspection shall include an inspection of equipment identified for daily inspection in accordance with the applicable codes and the manufacturer's recommendations.

(c) (d) The secretary shall conduct random inspections of amusement rides erected both

at permanent locations and at temporary locations. A warning citation for violation of this act shall be issued against any owner or operator for a first violation but no criminal proceeding shall be brought.

Sec. 6. K.S.A. 2016 Supp. 44-1603 is hereby amended to read as follows: 44-1603. The owner of an amusement ride shall retain at all times current maintenance and inspection records relating to the construction, repair and maintenance of its operation, including safety, inspection, maintenance records and ride operator training activities for such ride. Such records shall be available to any person contracting with the owner for the amusement ride's operation, and shall be made available to the department at reasonable times, including during an inspection upon the department's request. Records of daily inspections must be available for inspection at the location where the ride or device is operated. All records must be maintained for a period of *five* years.

Sec. 7. K.S.A. 2016 Supp. 44-1604 is hereby amended to read as follows: 44-1604. (a)

Amusement rides shall be constructed, maintained, operated and repaired in accordance with the standards ~~at least equivalent to those~~ **THERE IS NO EQUIVALENT TO ASTM. THERE ARE OTHER STANDARDS, (FOREIGN), BUT THERE IS NO COMPARATIVE DOCUMENT WHICH DETERMINES EQUIVALENCY. ASTM HAS BEEN WORKING ON THE HARMONIZATION OF ITS STANDARDS WITH OTHER WORLD STANDARDS FOR SEVERAL YEARS. TO DATE, NO EQUIVALENCY HAS BEEN AGREED BUT REVISIONS ARE BEING DEVELOPED TO BRING ALL STANDARDS CLOSER TO A COMMON SET OF REQUIREMENTS.** of the American Society for Testing and Materials that are in effect on the effective date of this act, ~~or if such standards are not applicable, in accordance with the manufacturer's recommendations.~~

*This Subchapter governs permanent amusement rides operated anywhere in the State of Kansas. It shall apply to all permanent amusement rides, including aquatic devices.*

No amusement ride shall be operated in this state unless nondestructive testing of the ride has been conducted in accordance with the recommendations of the manufacturer of the ride and or in conformance with standards at least equivalent to those of the American Society for Testing and Materials, (*ASTM*), that are in effect on the effective date of this act, *or the latest version*, whichever is applicable.

Sec. 8. K.S.A. 2016 Supp. 44-1607 is hereby amended to read as follows: 44-1607. (a)

Each patron of an amusement ride, by participation, accepts the risks inherent in such participation of which an ordinary prudent person is or should be aware.

**INHERENT RISKS ARE NOT OBVIOUS, PARTICULARLY IN THE MORE MECHANICALLY COMPLEX RIDES AND RIDES WITH COMPLICATED MOTIONS. CLEAR WARNINGS AND EXPLANATIONS OF THE RIDE MOTIONS AND FORCES ALONG WITH ANY PHYSICAL REQUIREMENTS OF THE PATRON TO SUSTAIN THE FORCES OF THE RIDE. WARNINGS EXPLAINING THE POTENTIAL INJURIES SHOULD ALSO BE CLEARLY STATED ALLOWING THE**

**PATRON OT MAKE AN INFORMED DECISION ABOUT ACCEPTING THE “INHERENT RISKS” OF THE DEVICE.**Comments

(b) Each patron of an amusement ride has a duty to:

(1) Exercise the judgment and act in the manner of an ordinary prudent person while participating in an amusement ride;

(2) obey all instructions and warnings, written or oral, prior to and during participation in an amusement ride;

(3) refrain from participation in an amusement ride while under the influence of alcohol or drugs;

(4) engage all safety devices that are provided;

(5) refrain from disconnecting or disabling any safety device except at the express direction of the owner's agent or employee; and

(6) refrain from extending arms and legs beyond the carrier or seating area except at the express direction of the owner's agent or employee.

(c) (1) A patron, or a patron's parent or guardian on a patron's behalf, shall report in writing to the owner any injury sustained on an amusement ride before leaving the premises, including:

(A) The name, address and phone number of the injured person;

(B) a full description of the incident, the injuries claimed, any treatment received and the location, date and time of the injury;

(C) the cause of the injury, if known; and

(D) the names, addresses and phone numbers of any witnesses to the incident.

(2) If a patron, or a patron's parent or guardian on a patron's behalf, is unable to file a report because of the severity of the patron's injuries, the patron or the patron's parent or guardian on the patron's behalf shall file the report as soon as reasonably possible.

(3) The failure of a patron, or the patron's parent or guardian on a patron's behalf, to report an injury under this subsection shall have no effect on the patron's right to commence a civil action.

(d) Any parent or guardian of a patron shall have a duty to reasonably ensure that the patron complies with all provisions of this act.

Sec. 9. K.S.A. 2016 Supp. 44-1610 is hereby amended to read as follows: 44-1610. (a)

It is a class B misdemeanor for an owner or operator of an amusement ride knowingly to operate, or cause or permit to be operated, any amusement ride in violation of this act.

(b) It is a class C misdemeanor knowingly to violate the provisions of K.S.A. 2016

Supp. 44-1608, and amendments thereto A notice of violation may be issued by the department

when an amusement ride is found to be out of compliance with the provisions of this act, or any rules or regulations adopted pursuant thereto. The notice of violation may include an order to cease and desist operation of the specific amusement ride until all violations are satisfactorily

17rs1343

- 11 -

corrected.

(b) Within ten business days after a notice of violation has been issued, the person issued such notice may file a written request with the department for an informal conference regarding the notice. If the person issued the notice of violation does not request an informal conference within this time frame, all provisions of the notice shall become final. If the notice of violation is not resolved within the prescribed time frame, the department may seek judicial enforcement of the notice of violation, or an enforcement order may be issued.

(c) The secretary may impose a fine of not more than \$1,000 for any violation of the provisions of this act, or any rules or regulations adopted pursuant thereto. All fines received by the secretary pursuant to this section shall be remitted by the secretary to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

(c) (d) Each day a violation continues shall constitute a separate offense.

(e) The provisions of this section shall be subject to the Kansas administrative procedures act.

Sec. 10. K.S.A. 2016 Supp. 44-1613 is hereby amended to read as follows: 44-1613.

The provisions of K.S.A. 2016 Supp. 44-1601 through 44-1612, and 44-1615 and sections 1 through 3, and amendments thereto, and this section, and amendments thereto, shall be known as the Kansas amusement ride act.

Sec. 11. K.S.A. 2016 Supp. 44-1614 is hereby amended to read as follows: 44-1614.

The secretary of labor shall adopt rules and regulations necessary to implement provisions of the

17rs1343

- 12 -

Kansas amusement ride act, K.S.A. 2016 Supp. 44-1601 through 44-1613 and 44-1615 et seq., and amendments thereto.

Sec. 12. K.S.A. 2016 Supp. 44-1601, 44-1602, 44-1603, 44-1604, 44-1607, 44-1610, 44-1613 and 44-1614 are hereby repealed.

Sec. 13. This act shall take effect and be in force from and after its publication in the statute book.