

HOUSE BILL No. 2389

By Committee on Federal and State Affairs

3-14

1 AN ACT concerning amusement rides; relating to the Kansas amusement
2 ride act; amending K.S.A. 2016 Supp. 44-1601, 44-1602, 44-1603, 44-
3 1604, 44-1607, 44-1610, 44-1613 and 44-1614 and repealing the
4 existing sections.
5

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

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

- 13 (1) The name of the owner and operator of the amusement ride;
- 14 (2) the location of the amusement ride;
- 15 (3) proof of insurance;
- 16 (4) certification of fabrication;
- 17 (5) certification of manufacturer's tested ride; and
- 18 (6) certification of employee training.

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

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

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

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

32 New Sec. 2. (a) The owner of an amusement ride shall have currently
33 in force an insurance policy written by an insurance company authorized
34 to do business in this state, or by a surplus lines insurer, in an amount of
35 not less than \$100,000 per occurrence with a \$300,000 annual aggregate
36 for amusement rides that are restricted solely for use by patrons aged 18 or

1 over, and an amount of not less than \$1,000,000 per occurrence for all
2 other amusement rides insuring the owner or operator against liability for
3 injury to persons arising out of the use of the amusement ride.

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

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

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

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

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

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

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

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

24 (b) The owner of an amusement ride shall notify the department of
25 any serious injury reported by a patron, or any injury caused by a
26 malfunction or failure of an amusement ride or caused by an operator or
27 patron error which impairs the function of an amusement ride. Such
28 notification shall be submitted to the department within 72 hours of the
29 time that the operator becomes aware of the injury.

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

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

35 (a) (1) "Amusement ride" means any mechanical or electrical device
36 that carries or conveys passengers along, around or over a fixed or
37 restricted route or course or within a defined area for the purpose of giving
38 its passengers amusement, pleasure, thrills or excitement and shall include,
39 but not be limited to:

40 (A) Rides commonly known as ferris wheels, carousels, parachute
41 towers, bungee jumping, reverse bungee jumping, tunnels of love and
42 roller coasters;

43 (B) equipment generally associated with winter activities, such as ski

1 lifts, ski tows, j-bars, t-bars, chair lifts and aerial tramways; and

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

5 (2) "Amusement ride" does not include:

6 (A) Games, concessions and associated structures;

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

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

15 (D) home-owned amusement rides.

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

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

20 (d) "Home-owned amusement ride" means an amusement ride owned
21 by a not-for-profit entity and operated:

22 (1) Solely within a single county;

23 (2) by individuals on a volunteer basis; and

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

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

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

32 (2) assess integrity, properties and composition; and

33 (3) measure geometrical characters.

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

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

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

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

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

4 (B) getting on an amusement ride;

5 (C) using an amusement ride;

6 (D) getting off an amusement ride; or

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

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

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

13 (k) "Qualified inspector" means a person who ~~holds a current~~
14 ~~certification or other evidence of qualification to inspect amusement rides,~~
15 ~~issued by a program specified by rules and regulations adopted under~~
16 ~~K.S.A. 2016 Supp. 44-1602, and amendments thereto~~ (A) *Is a licensed*
17 *engineer and has completed at least two years of experience in the*
18 *amusement ride field, consisting of at least one year of actual inspection*
19 *of amusement rides for a manufacturer, government agency, amusement*
20 *park, carnival or insurance underwriter, and an additional year of*
21 *practicing any combination of amusement ride inspection, design,*
22 *fabrication, installation, maintenance, testing, repair or operation; or (B)*
23 *provides satisfactory evidence of completing a minimum of five years of*
24 *experience in the amusement ride field, at least two years of which*
25 *consisted of actual inspection of amusement rides for a manufacturer,*
26 *government agency, amusement park, carnival or insurance underwriter,*
27 *and the remaining experience consists of any combination of amusement*
28 *ride inspection, design, fabrication, installation, maintenance, testing,*
29 *repair or operation.*

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

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

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

34 (2) a compound fracture; or

35 (3) other significant injury or illness that requires immediate
36 ~~admission and overnight hospitalization and observation by a licensed~~
37 ~~physician~~ *medical treatment.*

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

43 Sec. 5. K.S.A. 2016 Supp. 44-1602 is hereby amended to read as

1 follows: 44-1602. (a) ~~The secretary shall adopt rules and regulations~~
2 ~~specifying programs that issue certification or other evidence of~~
3 ~~qualification to inspect amusement rides and that the secretary determines~~
4 ~~require education, experience and training at least equivalent to those~~
5 ~~required on the effective date of this act for a level 1 certification by the~~
6 ~~national association of amusement ride safety officials. The secretary shall~~
7 ~~develop an inspection check list which shall be posted on the department~~
8 ~~web site.~~

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

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

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

30 (e) (d) The secretary shall conduct random inspections of amusement
31 rides erected both at permanent locations and at temporary locations. A
32 warning citation for violation of this act shall be issued against any owner
33 or operator for a first violation but no criminal proceeding shall be
34 brought.

35 Sec. 6. K.S.A. 2016 Supp. 44-1603 is hereby amended to read as
36 follows: 44-1603. The owner of an amusement ride shall retain at all times
37 ~~current maintenance and inspection records relating to the construction,~~
38 ~~repair and maintenance of its operation, including safety, inspection,~~
39 ~~maintenance records and ride operator training activities~~ for such ride.
40 Such records shall be available to any person contracting with the owner
41 for the amusement ride's operation, *and shall be made available to the*
42 *department at reasonable times, including during an inspection upon the*
43 *department's request. Records of daily inspections must be available for*

1 *inspection at the location where the ride or device is operated. All records*
2 *must be maintained for a period of three years.*

3 Sec. 7. K.S.A. 2016 Supp. 44-1604 is hereby amended to read as
4 follows: 44-1604. (a) *Amusement rides shall be constructed, maintained,*
5 *operated and repaired in accordance with the standards at least*
6 *equivalent to those of the American society for testing and materials*
7 *(ASTM) that are in effect on the effective date of this act, or if such*
8 *standards are not applicable, in accordance with the manufacturer's*
9 *recommendations.*

10 (b) No amusement ride shall be operated in this state unless
11 nondestructive testing of the ride has been conducted in accordance with
12 the recommendations of the manufacturer of the ride ~~and~~ or in
13 conformance with standards at least equivalent to those of the ~~American~~
14 ~~society for testing and materials~~ ASTM that are in effect on the effective
15 date of this act, *whichever is applicable.*

16 Sec. 8. K.S.A. 2016 Supp. 44-1607 is hereby amended to read as
17 follows: 44-1607. (a) Each patron of an amusement ride, by participation,
18 accepts the risks inherent in such participation of which an ordinary
19 prudent person is or should be aware.

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

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

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

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

27 (4) engage all safety devices that are provided;

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

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

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

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

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

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

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

41 ~~(2) If a patron, or a patron's parent or guardian on a patron's behalf, is~~
42 ~~unable to file a report because of the severity of the patron's injuries, the~~
43 ~~patron or the patron's parent or guardian on the patron's behalf shall file~~

1 the report as soon as reasonably possible.

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

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

7 Sec. 9. K.S.A. 2016 Supp. 44-1610 is hereby amended to read as
8 follows: 44-1610. (a) ~~It is a class B misdemeanor for an owner or operator~~
9 ~~of an amusement ride knowingly to operate, or cause or permit to be~~
10 ~~operated, any amusement ride in violation of this act.~~

11 ~~(b) It is a class C misdemeanor knowingly to violate the provisions of~~
12 ~~K.S.A. 2016 Supp. 44-1608, and amendments thereto. A notice of violation~~
13 ~~may be issued by the department when an amusement ride is found to be~~
14 ~~out of compliance with the provisions of this act, or any rules or~~
15 ~~regulations adopted pursuant thereto. The notice of violation may include~~
16 ~~an order to cease and desist operation of the specific amusement ride until~~
17 ~~all violations are satisfactorily corrected.~~

18 ~~(b)~~ *Within 10 business days after a notice of violation has been*
19 *issued, the person issued such notice may file a written request with the*
20 *department for an informal conference regarding the notice. If the person*
21 *issued the notice of violation does not request an informal conference*
22 *within this time frame, all provisions of the notice shall become final. If*
23 *the notice of violation is not resolved within the prescribed time frame, the*
24 *department may seek judicial enforcement of the notice of violation, or an*
25 *enforcement order may be issued.*

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

34 ~~(e)~~ ~~(d)~~ Each day a violation continues shall constitute a separate
35 offense.

36 ~~(e)~~ *The provisions of this section shall be subject to the Kansas*
37 *administrative procedure act.*

38 Sec. 10. K.S.A. 2016 Supp. 44-1613 is hereby amended to read as
39 follows: 44-1613. ~~The provisions of K.S.A. 2016 Supp. 44-1601 through~~
40 ~~44-1612, and 44-1615 and sections 1 through 3, and amendments thereto,~~
41 ~~and this section, and amendments thereto,~~ shall be known as the Kansas
42 amusement ride act.

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

1 follows: 44-1614. The secretary of labor shall adopt rules and regulations
2 necessary to implement provisions of the Kansas amusement ride act,
3 K.S.A. 2016 Supp. 44-1601 through ~~44-1613 and 44-1615~~ *et seq.*, and
4 amendments thereto.

5 Sec. 12. K.S.A. 2016 Supp. 44-1601, 44-1602, 44-1603, 44-1604, 44-
6 1607, 44-1610, 44-1613 and 44-1614 are hereby repealed.

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