

House Substitute for SENATE BILL No. 70

AN ACT concerning amusement rides; relating to the Kansas amusement ride act; amending K.S.A. 40-4801 and K.S.A. 2016 Supp. 40-4802, 44-1601, 44-1602, 44-1603, 44-1604, 44-1607, 44-1610, 44-1613 and 44-1614 and repealing the existing sections; also repealing K.S.A. 2016 Supp. 44-1615.

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, or the location where such ride is stored when not in use;
- (3) proof of insurance; and
- (4) certification that such ride meets the applicable ASTM international F24 committee standards.

(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, \$75 for a class A amusement ride, and \$100 for a class B amusement ride;
- (2) for amusement rides erected at a temporary location, \$30; and
- (3) for amusement rides owned or operated by a municipality or a nonprofit entity, whether erected at a permanent or temporary location, \$10.

(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) In addition to the permit fees required under subsection (a), no amusement ride shall be operated in this state unless the owner of such ride has registered as an amusement ride owner with the department. Registration shall be valid for a period of one year. The owner of an amusement ride shall register with the department in such form and in such manner as prescribed by the secretary, and by paying a registration fee as follows:

- (1) For amusement rides erected at a permanent location, \$500;
- (2) for amusement rides erected at a temporary location, \$250; and
- (3) for amusement rides owned by a municipality or nonprofit entity, whether erected at a permanent or temporary location, \$50.

The fee required under this subsection shall be an annual fee paid by the owner, regardless of the number of amusement rides owned by such owner.

(e) 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 amusement ride safety fund.

New Sec. 2. There is hereby established in the state treasury the amusement ride safety fund, which shall be administered by the department of labor. The amusement ride safety fund shall consist of those moneys credited to the amusement ride safety fund pursuant to K.S.A. 44-1610 and section 1, and amendments thereto. All expenditures from the amusement ride safety fund shall be for the administration and enforcement of the Kansas amusement ride act, and shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary, or the secretary's designee.

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 owner shall prominently display signage at the point of admission or ticket sale and at least two other locations in close proximity to the amusement ride explaining a patron's duty to report injuries sustained on such amusement ride. Such signage shall include instructions on how to contact the owner's representatives if immediate assistance is needed and how to make an injury report.

(4) 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.

(b) The owner of an amusement ride shall notify the department of any serious injury 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. Such notification shall be submitted to the department within 72 hours of the time that the operator becomes aware of the injury.

(c) If a serious injury occurs, the equipment or conditions that caused the injury shall be preserved for the purpose of an investigation by the department and such amusement ride shall be immediately removed from service until an investigation is completed or deemed unnecessary by the secretary. Except as provided in subsection (d), if investigation of a serious injury is not commenced within 24 hours after the department receives notification of such injury, then an investigation shall be deemed unnecessary.

(d) If the serious injury results in the death of a patron, the owner shall notify the department of the injury as soon as possible. Such notification shall be by telephone initially with a written notification sent within 24 hours after the initial notice. If the patron's death is related to a major malfunction of the amusement ride, an investigation shall be required and the department shall commence such investigation within 24 hours after receiving initial notice of the injury. No part of the amusement ride or the ride itself, shall be moved or repaired without the written approval of the secretary, or the secretary's designee, except that nothing in this subsection shall be construed so as to hinder emergency response personnel from performing their duties, or to prevent the elimination of an obvious safety hazard. The owner shall provide the department with complete access to the amusement ride and all related premises for the purposes of the investigation and shall provide all information related to the cause of the injury to the department.

Sec. 4. K.S.A. 40-4801 is hereby amended to read as follows: 40-4801. As used in K.S.A. ~~40-4801 through 40-4802~~ and 40-4803, and amendments thereto:

~~(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 but not be limited to:~~

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

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

~~(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;~~

~~(D) any inflatable equipment or other device that does not have a rigid structure or frame and which is inflated or otherwise supported by air pressure; and~~

~~(E) any amusement ride not excluded under paragraph (2) of this subsection.~~

~~(2) "Amusement ride" shall not include:~~

~~(A) Games, concessions and associated structures;~~

~~(B) any single passenger coin-operated ride that: (i) Is manually, me-~~

~~chanically or electrically operated; (ii) is customarily placed in a public location; and (iii) does not normally require the supervision or services of an operator; and~~

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

~~(b) “Operator” means a person actually engaged in or directly controlling the operations of an amusement ride.~~

~~(c) “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, the terms “amusement ride,” “operator” and “owner” shall have the same meanings as those terms are defined in K.S.A. 2016 Supp. 44-1601, and amendments thereto.~~

Sec. 5. K.S.A. 2016 Supp. 40-4802 is hereby amended to read as follows: 40-4802. No amusement ride shall be operated in this state unless at the time of operation the owner has in effect an insurance policy insuring the owner and operator against liability for bodily injury to persons arising out of the operation of the amusement ride. The insurance policy shall be written by an insurance company doing business in Kansas, *or by a surplus lines insurer*. Such insurance policy shall:

(a) Provide for coverage in an amount not less than \$1,000,000 *per occurrence with a \$2,000,000 annual aggregate*, except that this requirement shall ~~not apply~~ *be satisfied* if the owner of such amusement ride is the state; or any subdivision of the state ~~or a not-for-profit organization organized under the laws of Kansas and such owner self-insures, or participates in a public entity self-insurance pool in accordance with K.S.A. 75-6111, and amendments thereto;~~ and

(b) name as an additional insured any person contracting with the owner for the amusement ride’s operation.

Sec. 6. 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 international F24 committee standards, including*, but not be limited to:

(A) Rides commonly known as ferris wheels, carousels, parachute towers, bungee jumping, reverse bungee jumping, tunnels of love ~~and~~, roller coasters, *boat rides, water slides, inflatable devices, trampoline courts and go-karts;*

(B) equipment generally associated with winter activities, such as ski lifts, ski tows, j-bars, 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) “Class A amusement ride” means an amusement ride designed for use primarily by individuals aged 12 or less.

(d) “Class B amusement ride” means an amusement ride that is not classified as a class A amusement ride.

~~(e)~~(e) “Department” means the department of labor.

~~(d)~~(f) “Home-owned amusement ride” means an amusement ride owned by ~~a not for profit entity~~ *an individual* 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 *solely within a single county for strictly private use.*

~~(e)~~(g) “Nondestructive testing” means the development and application of technical methods *in accordance with ASTM F747 standards* 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.

~~(f)~~(h) “Operator” means a person actually *supervising, or* engaged in or directly controlling the operations of an amusement ride.

~~(g)~~(i) “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)~~(j) “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)~~(k) (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)~~(l) “Person” means any individual, association, partnership, corporation, limited liability company, government or other entity.

~~(k)~~(m) “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 licensed professional engineer, as defined in K.S.A. 74-7003, and amendments thereto, 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 under a qualified inspector for a manufacturer, governmental 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) *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 under a qualified inspector for a manufacturer, governmental agency, amusement park, carnival or insurance underwriter, and the remaining experience consists of any combination of amusement ride inspection, design, fabrication, installation, maintenance, testing, repair or operation; or*

(C) *has received qualified training from a third party, such as attainment of level II certification from the national association of amusement ride safety officials (NAARSO), attainment of level II certification from the amusement industry manufacturers and suppliers international (AIMS), attainment of a qualified inspector certification from the association for challenge course technology (ACCT), Pennsylvania department of agriculture — general qualified inspector status, or other similar qualification from another nationally recognized organization.*

~~(l)~~(n) “Secretary” means the secretary of labor.

~~(m)~~(o) “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 medical treatment.

~~(n)~~(p) “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.

(q) “Water slide” means a slide that is at least 15 feet in height and that uses water to propel the patron through the ride.

Sec. 7. 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. The secretary shall develop an inspection check list which shall be posted on the department web site.~~

~~(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 by a qualified inspector within the preceding 30 days. 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 provided by the department 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 owner of the amusement ride, 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.

(e) The secretary shall develop an inspection check list, which shall be posted on the department’s website.

Sec. 8. 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 three years.

Sec. 9. 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 ASTM standards adopted by the ASTM international F24 committee, as published in ASTM international standards volume 15.07.

(b) No amusement ride shall be operated in this state unless non-

destructive 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 that are in effect on the effective date of this act~~ *ASTM standards adopted by the ASTM international F24 committee, as published in ASTM international standards volume 15.07, whichever is applicable.*

Sec. 10. 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.

(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. 11. 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~~ *without a valid permit issued by the secretary.*

(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 corrected.*

(c) *Within 10 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.*

(d) *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 amusement ride safety fund.

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

(f) *The provisions of this section shall be subject to the Kansas administrative procedure act.*

Sec. 12. 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~~ 44-1614 and sections 1 through 3, and amendments thereto, ~~and this section, and amendments thereto,~~ shall be known as the Kansas amusement ride act.

Sec. 13. K.S.A. 2016 Supp. 44-1614 is hereby amended to read as follows: 44-1614. (a) The secretary of labor shall adopt rules and regulations necessary to implement provisions of the Kansas amusement ride act, K.S.A. 2016 Supp. 44-1601 ~~through 44-1613 and 44-1615~~ *et seq.*, and amendments thereto.

(b) *The secretary shall adopt rules and regulations specifying nationally recognized organizations that issue certifications or other evidence of qualification to inspect amusement rides, and that require education, experience and training at least equivalent to that required for a level II certification from NAARSO as of July 1, 2017.*

(c) *All references to the American society for testing and materials (ASTM) standards shall be to those standards adopted by the ASTM international F24 committee, as published in ASTM international standards volume 15.07, or any later version adopted by the secretary in rules and regulations.*

Sec. 14. K.S.A. 40-4801 and K.S.A. 2016 Supp. 40-4802, 44-1601, 44-1602, 44-1603, 44-1604, 44-1607, 44-1610, 44-1613, 44-1614 and 44-1615 are hereby repealed.

Sec. 15. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE concurred in
HOUSE amendments _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.