

HOUSE No. 2203

The Commonwealth of Massachusetts

PRESENTED BY:

Joseph F. Wagner

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to amusement devices.

PETITION OF:

NAME:

Joseph F. Wagner

DISTRICT/ADDRESS:

8th Hampden

HOUSE No. 2203

By Mr. Wagner of Chicopee, a petition (accompanied by bill, House, No. 2203) of Joseph F. Wagner relative to amusement devices. Public Safety and Homeland Security.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act relative to amusement devices.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 140 of the General Laws is hereby amended by striking out section
2 205A, as appearing in the 2006 Official Edition, and inserting in place thereof the following
3 sections:

- 4
- 5 Section 205A. Amusement Rides and Devices; Board; establishment; membership;
6 appointment; terms; compensation; expenses; personnel
- 7
- 8 There shall be in the department, but not under the control of the commissioner of public
9 safety, an amusements and attractions board. This board shall consist of the commissioner or a
10 member of the department designated by the commissioner from time to time, and ten persons
11 appointed by the governor for terms of four years, of whom two shall be persons who each own
12 or operate an amusement park, two shall be persons who each own or operate a carnival or
13 mobile show, two shall be persons who each own or operate a fair or fairgrounds, two shall be
14 persons who own or operate a waterpark or an family entertainment center, one shall be a person
15 engaged in a business generally related to amusements and attractions business, and one a
16 representative of the public. Notwithstanding the foregoing, the terms of the initial six
17 gubernatorial appointees shall be as follows: two appointees for a two-year term; two appointees
18 for a three-year term;
- 19 and, two appointees for a four-year term. The governor shall from time to time designate one
20 of the appointed members to serve as chairperson.
- 21
- 22 The commissioner of public safety shall provide the board with such clerical and other
23 assistance and inspectional personnel as may be necessary to carry out the duties of the board.

24 This section shall not apply to recreational tramways, as defined by section 71I of chapter 143,
25 manually-operated amusement rides with coined devices, skill games or playground equipment.

26

27 Section 205B. Definitions

28

29 As used in sections two hundred and five A to two hundred and five K, inclusive, the following
30 words shall, unless the context otherwise requires, have the following meanings:

31

32 “Amusement Park” is a permanent location for the operation of amusement rides and devices
33 which may include a family entertainment center (FEC).

34

35

36 “Amusement Ride or Amusement Device” is a device or combination of devices or elements
37 that carry, convey, or direct one or more persons over or through a fixed or restricted course or
38 within a defined area for the primary purpose of amusement or entertainment in an open or
39 enclosed location and which may be fixed to a location or moved from location to location or as
40 may be further defined by ASTM International. The term “amusement ride or amusement
41 device” shall include the following:

42

43 (1) Ferris Wheel;

44 (2) Carousel;

45 (3) Inclined railway;

46 (4) Circular Ride;

47 (5) Flat Ride;

48 (6) High Ride; and

49 (7) Kiddie Ride

50

51 “ASTM” is ASTM International, also known as the American Society for Testing and
52 Materials International.

53

54 “Board” is the Amusement Ride and Device Board.

55

56 “Carnival” or “Mobile Show” is a mobile enterprise principally devoted to offering amusement
57 or entertainment to the public in, upon, or by means of portable amusement rides or devices or
58 temporary structures in any number or combination, whether or not associated with other
59 structures or forms of public attraction.

60

61 “Circular Rides” are amusement rides whose motion is primarily rotary, in a fixed or variable
62 plane from horizontal to 45 degrees above horizontal.

63

64 “Designer/engineer” is a party that establishes and describes the configuration of an
65 amusement ride or amusement device, or the components thereof, establishes strength and
66 fatigue life, designs and develops electrical/electronic control systems, and defines inspection
67 criteria.

68

69 “Facility” is the area designated by the person or organization having operational responsibility
70 for certain amusement rides and amusement devices which is to be administered or operated as a
71 single enterprise.

72

73 “Flat Rides” are amusement rides that operate on a single level, whether over a controlled,
74 fixed course or track, or confined to a limited area of operation.

75

76 “High Rides” are amusement rides whose motion is in a fixed or variable plane from
77 horizontal to vertical.

78

79 “Inflatable Amusement Devices” are amusement devices that incorporate a structuring and
80 mechanical system and employ a high-strength fabric or film that achieves strength, shape, and
81 stability by pretensioning with internal air pressure, all of which are intended to provide an
82 enclosed area for the self-enjoyment of those so confined within.

83

84 “Installation or erection” is the actual act of onsite construction or the physical setting up and
85 making ready for use of an amusement ride or device.

86

87 “Inspector” is a person who, through education, experience, and training, is able to properly
88 evaluate an amusement ride or device to determine its conformance, within the scope of the
89 inspection, with ASTM International Committee F24 standards.

90

91 “Kiddie Rides” are amusement rides designed primarily for use by children younger than
92 twelve years of age.

93

94 “Maintenance Mechanic” is an individual designated by the owner of an amusement
95 device as the person responsible for overseeing the maintenance of amusement rides or
96 amusement devices and who has a valid NAARSO (National Association of Amusement Ride
97 Safety Officials) Level I or II certification, AIMS (Amusement Industry Manufacturers &
98 Suppliers International) Level I or II maintenance certification, or a certification by a similar
99 national organization as approved by the board, or a person holding a Bachelors of Science in
100 engineering, and who also has a minimum of three years experience in the amusement industry,
101 or a person certified by the board as a certified maintenance mechanic.

102

103 “Major Modification” is any change in either the structural or operational characteristics of an

104 amusement ride or amusement device which will alter its performance from that specified in the
105 manufacturer's design criteria.

106

107 "Manufacturer" is the party producing the amusement ride or amusement device and
108 performing major modifications and may also include the designer/engineer.

109

110 "Operator" is a person, including the Commonwealth or any political subdivision thereof,
111 having direct control of the starting, stopping, or speed of an amusement ride or amusement
112 device.

113

114 "Owner" is the title holder or lessee, including an agency of the Commonwealth or a political
115 subdivision thereof, of amusement rides or amusement devices administered or operated as a
116 single enterprise.

117

118 "Patron" is any person utilizing any amusement ride or amusement device that is under the
119 control of an operator for the purpose of amusement or entertainment or a self directed
120 amusement device.

121

122 Section 205C. Rules and regulations

123

124 After a hearing, the board shall adopt, and may from time to time amend or revoke, rules and
125 regulations in conformance with the standards and guidelines of ASTM for the inspection,
126 assembly, erection, installation, design, construction, major modification, operation, and
127 maintenance of amusement rides and amusement devices and for the licensing and certification
128 of inspectors thereof as provided by Mass. Gen. Laws c. 146, section 60, et seq. The board shall
129 in like manner adopt, and from time to time amend or revoke, rules and regulations for a system
130 of signs to be used by amusement ride and amusement device owners and operators in order to
131 promote the safety of patrons, workers, employees and visitors. Such system shall incorporate
132 standards in general use in the amusement industry to evaluate amusement rides and amusement
133 devices and to adequately alert patrons to the known risks associated with amusement rides and
134 amusement devices and to certain laws, rules and regulations. The attorney general shall assist
135 the board in framing such rules and regulations.

136

137 Section 205D. Licenses; issuance

138

139 No amusement ride or device shall be operated commercially unless a license for
140 such operation has been issued by the board. Such license shall be issued for a term of not
141 longer than one year, unless revoked for cause by the board, upon application therefore on a form
142 furnished by the board, and upon a determination by the board that the amusement ride or
143 amusement device conforms to ASTM standards and the rules and regulations of the board. Such

144 license shall not be issued without the provision, at least ten (10) days prior to the
145 commencement of operation of an amusement ride or amusement device by the applicant, of (1)
146 a certificate of insurance confirming the existence of an insurance policy for liability coverage in
147 an amount established by the board, but not less than \$1,000,000, from a carrier authorized to do
148 business in the Commonwealth with a ten-day notice of cancelation provision to the
149 Commonwealth and (2) a report, satisfactory to the board, from an inspector who is not an
150 employee of the Commonwealth, certified for competency by the board. In making such
151 determination the board may rely upon the report of an inspector certified by it in accordance
152 with its rules and regulations. A license issued by the board shall be valid throughout the
153 Commonwealth. An amusement ride or amusement device shall not be operated at any time
154 without the aforesaid liability insurance coverage.

155

156 Section 205E. Fees.

157

158 Each application for a license or a renewal thereof shall be accompanied by payment of a fee
159 for each amusement ride and amusement device. Each application from a person who is not
160 employed by the Commonwealth for a certificate of competency, or a renewal thereof, as an
161 inspector of amusement rides and amusement devices shall be accompanied by payment of a fee.
162 Each application for a certificate of competency, or a renewal thereof, for a maintenance
163 mechanic of amusement rides and amusement devices shall be accompanied by payment of a fee.
164 The amounts of such fees, after recommendation of the board, shall be determined annually by
165 the commissioner of administration under the provision of section three B of chapter seven.

166

167 Section 205F. Orders; appeal

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169 Any inspector or applicant for a certificate of competency to be an inspector of amusement
170 rides and amusement devices who is aggrieved by a final decision approved by the commissioner
171 pursuant to Mass. Gen. Laws c. 146, section 63 may appeal therefrom to the board. Any owner
172 or inspector, who is not an employee of the Commonwealth, or any operator who is aggrieved by
173 any order of the board may appeal therefrom to the superior court. No such appeal shall suspend
174 the operation of the order made by the board; provided that, the superior court may suspend the
175 order of the board pending the determination of such appeal whenever, in the opinion of the
176 court, justice may require such suspension. The superior court shall hear such appeal at the
177 earliest convenient day and shall enter such decree as justice may require.

178

179 Section 205G. Duties of owners; manufacturers; inspectors

180

181 (1) An owner shall:

182 (a) conspicuously place within the facility, in such form, size, and location as the board may
183 require, notice in plain language, of the statute of limitations and notice period established in

184 section 205I;

185 (b) maintain a sign system in all facilities in accordance with rules and regulations promulgated
186 by the board and shall be responsible for the maintenance and operation of facilities under its
187 control in a reasonably safe condition or manner; provided, however, that an owner shall not be
188 liable for death or damages to persons or property, while at an amusement facility, which arise
189 out of any risk inherent in the amusement facility activities;

190 (c) engage or employ at least one person as a maintenance mechanic certified by the board as
191 qualified to oversee the operation, maintenance, and inspection of amusement rides and
192 amusement devices;

193 (d) immediately close down an amusement ride or amusement device in the event of an “on
194 ride or device incident” or a “loading or unloading incident” resulting in serious injury requiring
195 immediate admission and overnight hospitalization and observation by a licensed physician
196 occurring as a result of a specific amusement ride or amusement device provided that the owner
197 has notice of such admission to a hospital;

198 (e) based on the recommendations of the manufacturer of a ride, each owner shall implement a
199 program of maintenance, testing and inspection conforming to ASTM standards.

200

201 (2) A manufacturer of an amusement ride or amusement device shall provide, with the delivery
202 of each ride or device:

203 (a) documented maintenance and operational instructions in the English language;

204 (b) a written inspection procedure in the English language. Any change to any inspection

205 procedure that is deemed essential by the manufacturer as a result of information not available
206 to the manufacturer at the time of initial delivery shall be communicated to all known owners;
207 and, otherwise conform to ASTM standards

208

209 (3) An inspector shall:

210 (a) perform inspections complying with all appropriate safety procedures;

211 (b) provide, upon the owner’s request, written documentation of inspection activities; and,
212 otherwise conform to ASTM standards.

213

214 Section 205H. Duties of patrons

215

216 A patron:

217 (1) shall not embark upon or disembark from an amusement ride or amusement device

218 except at a designated location and during designated hours of operation;

219 (2) shall not throw or expel any object from any amusement ride or amusement device while
220 riding thereon;

221 (3) shall not act in any manner while riding on an amusement ride or amusement device that
222 may interfere with its proper or safe operation;

223 (4) shall not engage in any type of conduct that may injure any person or property;

224 (5) shall not place any object in the track of an amusement ride or amusement device that
225 may cause injury to any third party or property;

226 (6) shall, while operating any patron-operated amusement ride or amusement device,
227 maintain control of his or her speed and course at all times;

228 (7) shall read all instructions before boarding any amusement ride or amusement device;

229 (8) shall be presumed to have sufficient abilities to use any amusement ride or amusement
230 device the patron boards and shall follow any written or oral instruction given regarding its use;

231 (9) shall not embark on any amusement ride or amusement device without authority of the
232 operator;

233 (10) shall not enter into any facility or portion thereof that has been designated closed; any
234 person entering a closed area of a facility shall be responsible for any death or injury
235 resulting from his or her action;

236 (11) shall be presumed to know his or her own capability to ride amusement rides and
237 amusement devices;

238 (12) shall be presumed to know of the existence of certain unavoidable risks inherent in the
239 riding of amusement rides and amusement devices, and shall assume the risk of injury or loss
240 caused by such inherent risks;

241 (13) shall, before entering onto or embarking on any amusement ride or amusement device,
242 have control of clothing and other apparel for the purpose of restraining or preventing any item
243 from being caught or entangled in the amusement ride or device or falling or flying off to the
244 detriment of other patrons; and,

245 (14) who fails to heed a warning issued by an owner or operator of an amusement ride or
246 amusement device shall forfeit his or her amusement ride or amusement device use
247 privileges and may be refused further use of an amusement ride or amusement device.
248

249 Section 205I. Actions against facility owners or operators; limitations
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251 For the purpose of sections 205A to 205K, inclusive, in any action brought against an
252 amusement ride or amusement device facility owner or operator, based on negligence,
253 evidence that the conduct of an owner or operator has conformed with the provisions of this
254 chapter and the rules or regulations of the board made pursuant to section 205C of this Chapter
255 shall be evidence of due care. No action may be maintained against an owner or operator for
256 injury to a patron unless, as a condition precedent thereof, the person so injured or his
257 representative shall, within ninety days of the incident, give to such owner and operator notice,
258 by registered mail, of the name and address of the person injured, and the time, place, and cause
259 of the injury. Failure to give the foregoing notice shall bar recovery, unless the court finds under
260 the circumstances of the particular case that such facility owner or operator had actual
261 knowledge of said injury or had reasonable opportunity to learn of said injury within said ninety-
262 day period, and was otherwise
263 not substantially prejudiced by reason of not having been provided actual written notice of said

264 injury within said period. In any case in which lack of written notice, actual knowledge, or a
265 reasonable opportunity to obtain knowledge of any injury within said ninety-day period is
266 alleged by such facility owner or operator, the burden of proving substantial prejudice shall be on
267 the owner or operator. An action to recover for such injury shall be brought within one year after
268 the date of such injury.

269

270 Section 205J. Penalties

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272 Whoever violates any provision of section 205D, 205G, or any rule or regulation made under
273 the provisions of section 205C, shall be punished by a fine of not more than one thousand
274 dollars; provided, however, that any person who operates an amusement ride or amusement
275 device, after the license therefore has been suspended or revoked, shall be punished by a fine of
276 one hundred dollars for each day of such operation.

277

278 Section 205K. Jurisdiction and control

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280 Amusement Rides and Amusement Devices shall not be subject to the provisions of 780 Code
281 of Massachusetts Regulations also known as the building code, and shall not be subject to the
282 jurisdiction or control of the Board of Building Regulations and Standards.