



OUTDOOR AMUSEMENT BUSINESS ASSOCIATION

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To promote the preservation
and growth of the outdoor amusement industry
through leadership, advocacy and education.*

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trustees

March 22, 2017

The Honorable John Barker
Chair, House Committee on Federal and State Affairs
Kansas Legislature
Topeka, KS

RE: House Bill No. 2389 – Act Relating to Amusement Rides

Dear Chair Barker and Committee Members:

On behalf of the portable ride industry in North America, the OABA has been its national trade association for over 50 years. Our 2,500 members include carnivals, circuses, food/game concessionaires and others who serve America's fairs, festivals and community events, I respectfully submit our comments on this proposed bill.

While I am aware that some OABA members will be testifying before your Committee on Friday, as "Neutral" proponents to these referenced amusement ride safety, I too am submitting the attached, highlighted comments, as being in support of improving your State's amusement ride laws, but with further clarification and research as noted.

You will see that I highlighted certain provisions in this proposed bill, in yellow, with comments on our concerns, behind each page. We believe these issues need further discussion and refinement.

Having been in the amusement industry for over 30 years, with a large theme park provider and now as the CEO of this national trade association representing the mobile amusement industry, I have worked closely with many State legislators and regulators to improve safety on portable amusement rides. As you know carnivals worked closely with America's fairs in support of their Agricultural missions providing much needed revenue to help with education, capital improvements to fairgrounds and patron safety.

I would be please to work with members of your Committee and others to help improve patron safety in your State. Safety is critical to the success of all involved.

Sincerely,

Robert W. Johnson
President

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HOUSE BILL NO. _____

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) ¹certification of fabrication;
- (5) certification of manufacturer's tested ride; and
- (6) certification of employee training.


(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) ²for 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


Summary of Comments on ks1.Im_lmd_200

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 Number: 1 Author: Bob Subject: Highlight Date: 3/21/2017 3:53:31 PM

 Author: Bob Subject: Sticky Note Date: 3/22/2017 11:25:52 AM
"certification of fabrication" is not something the portable amusement ride industry encounters on a permit application. Perhaps this should read "compliance with ASTM International F-24 Committee standard on Manufacture and Design of the amusement rides."

 Number: 2 Author: Bob Subject: Highlight Date: 3/21/2017 3:53:53 PM

 Author: Bob Subject: Sticky Note Date: 3/22/2017 11:28:17 AM
Permit fees vary in many States. Some are based on ride classification, such as kiddie rides, major or spectacular and some are based on the number of portable rides erected and operated. We assume this is a one time fee, to permit rides in one or several locations, in the State, on an annual basis.

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, ¹ 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 self-insurance, 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

Number: 1 Author: Bob Subject: Highlight Date: 3/21/2017 3:48:12 PM

 Author: Bob Subject: Sticky Note Date: 3/22/2017 11:14:51 AM

As written, this is not typical insurance language or requirements our industry sees in other States, such as TX, OK and Iowa. We would suggest that you consult with industry insurance agencies for better language. Insurance agencies such as Allied Specialty, Kaliff Insurance, or Haas & Wilkerson, are most common portable amusement ride industry insurers.

 Author: Bob Subject: Sticky Note Date: 3/22/2017 11:07:25 AM

The definition of "serious injury" needs to be reviewed and revised as individual privacy laws have changed and we may not know or be able to access information of someone "admitted" or has an overnight stay in a hospital. You might consider transported by paramedics to a medical treatment center or hospital, as a reportable incident.

(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.

(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 which impairs the function of an amusement 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.

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, 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; 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) ¹Home-owned amusement ride" means an amusement ride owned by a not-for-profit 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.

(e) "Nondestructive testing" means the development and application of technical

 Number: 1 Author: Bob Subject: Highlight Date: 3/21/2017 3:57:08 PM

 Author: Bob Subject: Sticky Note Date: 3/22/2017 10:49:53 AM

We don't understand why "home-owned" amusement ride(s) by a non-profit entity are exempt from these regulations. They have similar safety risks and potential liability issues. It is our opinion that these "home-owned" rides should be permitted, inspected and operated in accordance with State law applicable to other amusement entities.

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.

(f) "Operator" means a person actually 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~~ ¹ (A) 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; 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, 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) ² other significant injury or illness that requires immediate admission and overnight

 Number: 1 Author: Bob Subject: Highlight Date: 3/21/2017 3:59:23 PM

 Author: Bob Subject: Sticky Note Date: 3/22/2017 11:01:35 AM

This is definition references the term "licensed engineer," which is not something our industry encounters with other state amusement ride regulations. Typically, this would refer to an AIMS or NAARSO certified inspector. who is a third-party, certified inspector or some who owns portable amusement rides who is AIMS or NAARSO certified to inspect such rides. We believe the term AIMS or NAARSO certified inspector should suffice. Most state laws and regulations refer to these recognized, industry-wide amusement ride certification programs. There are a few states that require an engineering review of a new ride, prior to it operating in the state, such as New Jersey.

 Number: 2 Author: Bob Subject: Highlight Date: 3/21/2017 4:00:54 PM

 Author: Bob Subject: Sticky Note Date: 3/21/2017 5:02:28 PM

Once again, patient privacy laws will make this requirement difficult if not impossible for the portable amusement ride industry, and others. And, the term "significant" is not defined.


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. 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. ¹ 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) ² inspections performed pursuant to this section shall be paid for by the insurance

 Number: 1 Author: Bob Subject: Highlight Date: 3/21/2017 4:02:28 PM

 Author: Bob Subject: Sticky Note Date: 3/21/2017 5:08:57 PM

Unless you allow the portable amusement ride owner, who is certified by either "NAARSO" or "AIMS" to do his/her own inspection prior to use by a patron, this will be cost prohibitive and we don't believe there are sufficient numbers of qualified inspectors in the State to inspect "upon reassembly and prior use by a patron."

 Number: 2 Author: Bob Subject: Highlight Date: 3/21/2017 4:05:20 PM

 Author: Bob Subject: Sticky Note Date: 3/21/2017 5:32:26 PM

As is the case with portable amusement rides, most insurance companies conduct an inspection of their insureds rides and equipment at least annually, for insurance purposes. this is usually done by an AIMS or NAARSO industry certified inspector. The cost of this inspection is usually covered by the insurance company, if they are insuring the ride owner. Insurance companies do not do other inspections on rides, unless there is a serious incident/injury as defined above, for investigative purposes. They do not perform inspections on portable amusement rides at each set-up or at each event.


¹ 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.


(e) (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. ² 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. 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 of the ³ 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


 Number: 1 Author: Bob Subject: Highlight Date: 3/21/2017 4:05:25 PM

 Number: 2 Author: Bob Subject: Highlight Date: 3/21/2017 4:03:55 PM

 Author: Bob Subject: Sticky Note Date: 3/22/2017 11:34:32 AM

We understand the need for portable amusement ride records as described, however, portable ride owners may have limitations on storage of such ride manuals from the Manufacturer, in their mobile office. We are seeing more and more acceptance of electronic/scanned computer files on such records. If that is not the case in Kansas, then the portable ride owners need a "reasonable" time frame to produce any files not in their mobile office but would be in their home office. However, employee training files, ride maintenance, daily inspection check lists, or major repair on rides should be kept in the mobile office.

 Number: 3 Author: Bob Subject: Highlight Date: 3/21/2017 4:04:24 PM

 Author: Bob Subject: Sticky Note Date: 3/21/2017 5:27:26 PM

ASTM International F-24 Committee on amusement rides and devices should be referenced here and in other places in this bill. This was changed several years ago by this standards organization.

the manufacturer's recommendations.

(b) 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 that are in effect on the effective date of this act, 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.

(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.~~

 Number: 1 Author: Bob Subject: Highlight Date: 3/21/2017 4:06:19 PM

 Author: Bob Subject: Sticky Note Date: 3/22/2017 11:19:00 AM
Same comment as above, referencing ASTM International F 24 Committee.

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

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. ¹ 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.


~~(e)~~ (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

Number: 1 Author: Bob Subject: Highlight Date: 3/21/2017 4:08:49 PM

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If permit fees and violations of any provision of this Act occurs, it is our recommendation that these funds be separately segregated from other State general funds to help defray the costs born by the Department of Labor, or other State agency in enforcement of this law and its regulations. We would encourage full transparency of such funds, upon request.

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.