

MINUTES OF THE HOUSE LOCAL GOVERNMENT.

The meeting was called to order by Chairperson Rep. Gerry Ray at 3:30 p.m. on February 1, 2001 in Room 519-S of the Capitol.

All members were present except:                   Rep. Hermes - excused  
  Rep. Barnes - excused

Committee staff present:                               Theresa Kiernan, Revisor  
  Mike Heim, Research  
  Kay Dick, Committee Secretary

Conferees appearing before the committee:   Randy Allen, Executive Director, Kansas County Assoc.  
  Dan Harden, Director Public Works Riley  
  Rep. Tom Sloan  
  Bill Ogg, Manager, Kansas State Fair  
  David Garrett, Vice President, Haas & Walkerton  
  Gary White, Kansas Trial Lawyers Assoc.

Others attending:                                        See attached list

The Chair announced that the minutes for Jan. 11, 2001 and Jan. 13, 2001 had been passed out to each of the members to be read. If there were any changed contact Kay, otherwise, they would be voted on for approval at next Tuesdays meeting. She also informed the Committee that they would be working **HB 2086** on the banking issue

**The Chair opened the hearing on HB 2120 - amusement rides; relating to inspection and regulation**

Representative Tom Sloan was recognized by the chair as the first proponent of the bill. He testified in support of requiring amusement rides be inspected to better ensure riders safety. He pointed out that Kansas is one of only six states that do not require amusement rides to be inspected to better ensure their safe operation and to protect riders. He also stated that the bill has a provision that requires responsible ridership by the patrons. He also explained that the bill requires rides be operated safely by trained personnel, documentation of inspections and train be available to the contracting fair or organization. (attachment #1) Rep. Sloan answered questions from committee members.

Bill Ogg, General Manager, Kansas State Fair, gave testimony stating that **HB 2120** provides for legislation defining prudent business practice currently conducted by the majority of amusement ride owners and operators in Kansas. Enacting this bill is an exercise in proactive government. This bill includes language that would strengthen the State defense if an accident happened. Mr. Ogg also indicated that **HB 2120** would be enhanced with the additions that are numbered in his written testimony. He requested the adoption of these suggestions. (attachment #2) Mr. Ogg answered questions from committee members.

David Garrett, Vice President, Haas & Wilkerson, gave testimony in support of and improvements to **HB 2120**. His company is the nation's largest, privately owned insurance agency providing service to the outdoor amusement industry. He stated that they have reviewed the legislation and are satisfied with the purpose and intent of its potential impact on carnivals and amusement parks in the state of Kansas. He pointed out the amendments needed to clarify or improve this bill were listed in his written testimony. He also indicated the important provisions of **House Bill 2120** that parallel Haas & Wilkerson underwriting and /or loss control standards. He stressed, "The overlying theme is the safety of the citizens of Kansas." (attachment # 3) Mr. Garrett responded to question asked by committee members.

Gary White, attorney, appearing on behalf of the Kansas Trial Lawyers Assoc. testified in general support

CONTINUATION SHEET

MINUTES ON THE HOUSE LOCAL GOVERNMENT COMMITTEE

February 1, 2001

Page 2

of this bill because it proposes to safeguard the safety of Kansans and in particular, our children. He noted that there were some concerns with the bill and proposed some changes as outlined in his written testimony. Mr. White also indicated that he has discussed these concerns with the bill's author, Rep. Tom Sloan, and the amendments that were made were acceptable to the representative. (attachment #4 & 4a)

Written only, testimony from Robert Johnson, Exclusive Director, Outdoor Amusement Business Association, Inc. was brought to their attention of the committee members by the Chair. (attachment # 5)

**Chair Ray closed the hearing on HB 2120.**

**Madam Chairman Ray opened the hearing on HB 2161: concerning the awarding of certain contracts**

Randy Allen, Executive Director, Kansas County Association, expressed support for a "balloon" to **HB 2161**. The "balloon" would increase the threshold which a surety bond is required from the current \$10,00 to \$40,000. The rationale for requesting the change is feedback from KAC members who experience difficulty interesting multiple contractors in small remodeling or construction jobs in county facilities. Mr. Allen stated that he wanted to be clear that, wherever the threshold is set, counties would always be free in their discretion to require surety bonds for contract less than the amount established in state law. In summary, KAC seeks a modernization of the current statute as it pertains to surety bonds only and do not seek to amend the threshold at which public bidding of a project is required.. (attachment # 6 & 6a)

Dan Harden, Director Public Works, Riley County, testified in support of **HB 2161** and the "balloon" that was presented in the previous testimony. He also agreed with the testimony of raising surety bonds and thus, the money saved by the public through increased competition would be greater than the occasional lose paid out by self insuring potential unpaid claims on a project. (attachment #7) Mr. Harden answered questions posed by the committee members.

**Rep. Ray, Chair, closed the hearing on HB 2161.**

Chair made announcements concerning next weeks scheduled meeting, Tuesday, February 6, 2001.

Meeting was adjourned by the chair at 5:00 p.m.

HOUSE LOCAL GOVERNMENT COMMITTEE  
GUEST LIST  
FEBRUARY 1, 2001

[PLEASE PRINT YOUR NAME]

[REPRESENTING]

DAVID GARRETT

HAAS & WILKERSON INS

Chris Niemann

Haas & Wilkerson INS.

Steve Hill

HAAS & WILKERSON INS.

Bill Ogy

Kansas State Fair

Wendy Adams

KAAA

DAN HARDEN

Riley Co.

Gary Zoepke - Peggy Zoepke

Fun Services of KC

Randy Allen

Kansas Association of Counties

TOM SLOAN  
REPRESENTATIVE, 45TH DISTRICT  
DOUGLAS COUNTY

STATE CAPITOL BUILDING  
ROOM 446-N  
TOPEKA, KANSAS 66612-1504  
(785) 296-7677  
1-800-432-3924

772 HWY 40  
LAWRENCE, KANSAS 66049-4174  
(785) 841-1526



TOPEKA  
HOUSE OF  
REPRESENTATIVES

**TESTIMONY  
HOUSE BILL 2120  
Amusement Rides Safety Inspection  
February 1, 2001**

**Madam Chairman, Committee Members:**

I appreciate the opportunity to testify in support of requiring amusement rides be inspected to better ensure rider safety.

House Bill 2120 is virtually the same bill that overwhelmingly passed the House in 1999. The Senate received the bill too late in the session to adequately work it, though they passed a truncated version. Despite both houses having an interest in the bill, a conference committee was never called in 1999 or 2000. However, it should be noted that a 2000 Conference Committee on insurance issues incorporated the requirement that amusement ride operators carry insurance on their equipment and operations.

While industry representatives will testify in more specific terms about why this bill is important, it is important to note:

(1.) Kansas is one of only six states that do not require amusement rides be inspected to better ensure their safe operation and to protect riders;

(2.) This bill represents a balance of interests: Community-owned ride operators, ride manufacturers, the insurance industry, responsible major ride

**HOUSE LOCAL GOVERNMENT**

**2/1/01**

**Attachment 1**



Testimony  
HB 2120 - Amusement Ride Safety Inspection  
February 1, 2001  
Page 2

owners, the amusement ride operators association, and the fairs that contract for such rides.

(3.) The bill requires rides be operated safely by trained personnel and requires that riders act responsibly to better ensure their own safety;

(4.) Documentation of inspections and training must be available to the contracting fair or organizations; and

(5.) No cumbersome and expensive bureaucracy is created by passage of this bill. Safety inspections are performed by persons certified through a national cooperative effort of the insurance industry, ride manufacturers, and ride operators.

I have attempted to work with all interested and responsible parties in developing this legislative proposal. It is as cost-free as I can make it for all parties, especially state and local governments. It also is as "painless" as possible for operators, while advancing the cause of better protecting riders from injury as a result of operator actions or rider actions.

I appreciate your consideration, again, of this child-oriented consumer protection proposal.

Tom Sloan  
Representative - 45<sup>th</sup> District

The Kansas State Fair  
2000 North Poplar  
Hutchinson, Kansas 67502-5598  
316 669-3600  
Fax: 316 669-3640  
E-Mail: ksfair@southwind.net  
www.kansasstatefair.com



BILL OGG, GENERAL MANAGER  
DENNY STOECKLEIN, ASSISTANT MANAGER  
LARRY ANKERHOLZ, PHYSICAL PLANT MANAGER

January 31, 2001

The Honorable Gerry Ray, Chairman  
Local Government Committee  
State Capitol 112-S  
Topeka, KS 66612

Dear Representative Ray and Members of the Committee on Local Government:

House Bill 2120 provides for legislation defining prudent business practice currently conducted by the overwhelming majority of amusement ride owners and operators in Kansas. Regular safety inspection of the mechanical devices, training of operators and liability coverage are reasonable expectations that Kansans deserve when investing their leisure time and money at an amusement park, or mobile carnival operation.

Enacting this bill is an exercise in proactive government. To me, that means recognizing and fulfilling a need of the general citizenry as a whole in matters wherein it is impractical for interested citizens to individually address that need. HB 2120 assures that all Kansans can enjoy the excitement and family fun of amusement rides, confident that all legal operators have exercised due diligence.

As the manager of a State Facility hosting amusement rides, I strongly urge your passage of rider responsibility legislation. HB 2120 includes language that would dramatically strengthen the State defense if an accident were to ever occur. This same protection would of course apply to County Fair Boards, civic, and fraternal organizations and others who contract for amusement rides.

The bill would be enhanced with the following additions:

1. Section 1 (P1, lines 36 and 37) Inflatable equipment including moon walks warrant inspection and liability coverage.
2. Section 1 (P1, lines 38-41) Riders should not be excluded on the basis of ownership. The State Fair owns a boat ride tunnel that is operated by an independent contractor. It is reasonable that we as a State Agency abide by the guidelines of HB 2120. This would not impose a personnel or cost burden.

**HOUSE LOCAL GOVERNMENT**  
**2/1/01**

Representative Gerry Ray

2

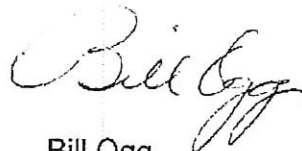
January 31, 2001

3. Section 3 (P3, line 25) National Association of Amusement Ride Safety Officials should be capitalized. Amusement Industry Manufacturers and Suppliers International is a respected and recognized organization that offers seminars and certification of ride inspectors. I suggest it be added as an equal to NAARSOI. State Fair has invested in employee training at AIMS seminars.
4. Section 3 (P3, lines 27-29) The calendar year request may be unworkable. If the intent does not require the ride to be inspected in Kansas, only that it be inspected prior to operation in Kansas since the first of each year, then that is reasonable.
5. Section 5 (P3, line 43 and P4, line 1) American Society for Testing and Materials should be capitalized.
6. Section 8 (P4) Inclusion of designated penalty(s) for patron violations would further strengthen the rider responsibility legislation.

I respectfully request your adoption of these suggestions. I would add that they address imperfections on a worthy bill that deserves enactment. I extend my appreciation to Representative Tom Sloan for his effort in introduction of legislation that well serves Kansans.

Thank you for your attention.

Sincerely,



Bill Ogg  
General Manager

dn

**2-2**



## HAAS & WILKERSON INSURANCE

4300 Shawnee Mission Parkway, Shawnee Mission, Kansas 66205-2526  
P.O. Box 2946, Shawnee Mission, Kansas 66201-1346  
913-432-4400 • 800-821-7703 • FAX 913-676-9389

February 1, 2001

### Testimony in support of and improvements to House Bill 2120

Representative Gerry Ray, Chairperson and Honorable Committee Members  
Local Government Committee  
State Capitol  
Topeka, Kansas 66612-1504

As the nation's largest, privately owned insurance agency providing services to the outdoor amusement industry, we have reviewed the legislation in detail at the request of and in conjunction with major Kansas domiciled carnival companies, amusement parks, the Kansas State Fair, the Kansas Fair Association and the Outdoor Amusement Business Association, which represents the entire mobile amusement industry nationwide. We are all satisfied with the purpose and intent of the legislation and its potential impact on carnivals and amusement parks in the state of Kansas. Amendments needed to clarify or improve the Act are listed below. In addition, I have attached highlights of your Bill that also form the backbone of our underwriting and loss control requirements for those accounts we service, not only in Kansas, but nationwide.

1. Section 1 (P1, Lines 36-41) – The wisdom of exempting certain amusement devices on the basis of type of attraction or ownership should be reconsidered. The intent of the legislation is to provide for safety of the citizens of Kansas and make provision for recovery from insurance in the event of an incident.
2. Section 3 (P3, Line 25) – National Association of Amusement Ride Safety Officials should be capitalized and should be accompanied by...or Amusement Industry Manufacturers and Suppliers International. Both organizations train, test and certify ride inspectors.
3. Section 3 (P3, Lines 27-29) – Will need to be amended for logistical reasons. Specifically, Line 27 requires portable rides be inspected before the first day of operation in this state. There are not enough qualified inspectors to accomplish this requirement of Kansas domiciled operators. Inspections cannot be done prior to the first day of service to properly survey the operation of the equipment. Perhaps the requirement could be the same for portable and permanent rides, or require the inspection be completed prior to July 1<sup>st</sup>, so that the inspector could perform a thorough job.

**HOUSE LOCAL GOVERNMENT**

ST. PETERSBURG, FL • PHILADELPHIA, PA • NORTHRIDGE, CA

**2/1/01**

**Attachment 3**



4. Section 5 (P3, Line 43 and P4, Line 1) – American Society for Testing and Materials should be capitalized.
5. Section 8 (P4, Lines 20-43 and P5, Lines 1-9) – A class B or C misdemeanor penalty should be added for violations of the provision of this section to enforce patron violations the same as owner/operator or sponsor violations.
6. There is no provision for state government oversight. An agency should be designated to review and implement changes as needed.

Thank you again for the opportunity to be of service.

Sincerely,



David L. Garrett  
Vice President

pkb  
Attachment

cc: Robert Johnson  
Executive Director  
Outdoor Amusement Business Association

Bill Ogg  
General Manager  
Kansas State Fair

Chris Flattery  
Ottaway Amusement Company  
Derby, KS

David Rohr  
Joyland Amusement Park

Stan Nelson  
Wichita, KS

Natalie Bright  
Bright & Bright

**IMPORTANT PROVISIONS OF HOUSE BILL 2120 THAT PARALLEL HAAS & WILKERSON UNDERWRITING AND/OR LOSS CONTROL STANDARDS**

1. Insurance requirements: \$1,000,000 per occurrence  
\$2,000,000 annual aggregate

These are the minimum liability limits, which we offer to amusement ride owners participating in our program.

2. Automatic Additional Insured Status: The legislation requires coverage be automatically extended to the sponsor, an important provision of our policies for many years.
3. Thirty (30) Day Written Cancellation Clause: An important provision so the sponsor and/or State of Kansas be advised upon major alteration or cancellation of the policy prior to the expiration date or non-renewal for any reason.
4. Inspector Certification and/or Training Requirements - National Association of Amusement Ride Safety Official Level I Inspector Certification is the minimum acceptable standard proposed in the legislation and also the minimum acceptable standard for inspectors or loss control representatives implementing our insurance program.
5. Preparation and Retention of Maintenance Documentation: Critically important provision. A standard requirement of our insureds, which are not only reviewed in the event of an incident, but during safety surveys.
6. Non-Destructive Testing Per Manufacturer Requirements: At a very minimum all manufacturer non-destructive testing must be performed and documented annually.
7. Implementation and Documentation of Operator Training: This has been an important underwriting and loss control requirement for many years to assure safe and proper operation of the equipment.
8. Safety Instructions/Signage: Originally recommending and then requiring safety instructions or height and size requirements in addition to rider limitations at each device has been a standard underwriting requirement for several years.
9. Prompt Incident Reporting Provisions: All amusement customers are required to promptly report each and every incident, no matter how minor, promptly as our insurance policies carry no deductible provision and pay from the first dollar for any and all liability claims.

## HOUSE BILL No. 2120

By Committee on Local Government

1-23

9 AN ACT concerning amusement rides; relating to inspection and regu-  
10 lation thereof; prohibiting certain acts and providing penalties and  
11 remedies for violations.

12  
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. As used in this act:

15 (a) (1) "Amusement ride" means any mechanical or electrical device  
16 that carries or conveys passengers along, around or over a fixed or re-  
17 stricted route or course or within a defined area for the purpose of giving  
18 its passengers amusement, pleasure, thrills or excitement and shall in-  
19 clude but not be limited to:

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

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

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

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

29 (A) Games, concessions and associated structures;

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

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

38 (D) any nonprofit amusement ride owned by a political subdivision  
39 of the state; or

40 (E) any amusement ride owned and operated by a not-for-profit or-  
41 ganization and used by the public at not more than three events per year.

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

RE consider

DELETED

5  
M

1 ed inspection by such inspector.  
2 (c) "Nondestructive testing" means the development and application  
3 of technical methods such as radiographic, magnetic particle, ultrasonic,  
4 liquid penetrant, electromagnetic, neutron radiographic, acoustic emis-  
5 sion, visual and leak testing to:

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

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

10 (3) measure geometrical characters.

11 (d) "Operator" means a person actually engaged in or directly con-  
12 trolling the operations of an amusement ride.

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

16 (f) "Parent or guardian" means any parent, guardian or custodian  
17 responsible for the control, safety, training or education of a minor or a  
18 disabled person, as defined by K.S.A. 59-3002 and amendments thereto.

19 (g) (1) "Patron" means any individual who is:

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

22 (B) getting on an amusement ride;

23 (C) using an amusement ride;

24 (D) getting off an amusement ride; or

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

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

29 (h) "Person" means any individual, association, partnership, corpo-  
30 ration, limited liability company, government or other entity.

31 (i) "Qualified inspector" means a person who holds a current certi-  
32 fication or other evidence of qualification to inspect amusement rides,  
33 issued by a program specified by rules and regulations adopted under  
34 section 3, and amendments thereto.

35 (j) "Serious injury" means an injury that results in:

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

38 (2) a compound fracture; or

39 (3) other significant injury or illness that requires immediate admis-  
40 sion and overnight hospitalization and observation by a licensed physician.

41 (k) "Sign" means any symbol or language reasonably calculated to  
42 communicate information to patrons or their parents or guardians, in-  
43 cluding placards, prerecorded messages, live public address, stickers, pic-

1 tures, pictograms, guide books, brochures, videos, verbal information and  
2 visual signals.

3 Sec. 2. (a) No amusement ride shall be operated in this state unless  
4 at the time of operation the owner has in effect an insurance policy,  
5 written by an insurance company authorized to do business in Kansas,  
6 insuring the owner and operator against liability for bodily injury to per-  
7 sons arising out of the operation of the amusement ride. Such insurance  
8 policy shall:

9 (1) Provide for coverage in an amount not less than \$1,000,000 per  
10 occurrence and not less than \$2,000,000 in the annual aggregate; and

11 (2) name as an additional insured any person contracting with the  
12 owner for the amusement ride's operation.

13 (b) An insurance policy required by this section shall provide that the  
14 insurer may not cancel or refuse to renew the policy without 30 days'  
15 written notice to the insured unless inspection reveals the ride is unsafe  
16 and appropriate repairs cannot or will not be made, in which case cov-  
17 erage may be canceled immediately to force closure of the ride.

18 (c) A copy of the insurance policy required by this section shall be  
19 available for inspection by any person contracting with the owner for the  
20 amusement ride's operation.

21 Sec. 3. No amusement ride shall be operated in this state unless such  
22 ride has a valid certificate of inspection by a person who holds current  
23 certification evidencing compliance with the standards required on Jan-  
24 uary 30, 1998, for at least a level 1 (basic) inspector certification of the  
25 national association of amusement <sup>SAFETY</sup> ride officials. An amusement ride  
26 erected at a permanent location in this state shall be inspected by a qual-  
27 ified inspector at least every 12 months. An amusement ride erected at a  
28 temporary location in this state shall have been inspected by a qualified  
29 inspector before it is first operated in this state in any calendar year. The  
30 certificate of an inspection required by this subsection shall be signed and  
31 dated by the inspector and shall be available to any person contracting  
32 with the owner for the amusement ride's operation. In addition, a visible  
33 inspection decal or other evidence of inspection shall be posted in plain  
34 view on or near the amusement ride, in a location where it can easily be  
35 seen.

36 Sec. 4. The owner of an amusement ride shall retain at all times  
37 current maintenance and inspection records for such ride. Such records  
38 shall be available to any person contracting with the owner for the amuse-  
39 ment ride's operation.

40 Sec. 5. No amusement ride shall be operated in this state unless non-  
41 destructive testing of the ride has been conducted in accordance with the  
42 recommendations of the manufacturer of the ride and in conformance  
43 with standards at least equivalent to those of the American society for

CAPITULATE  
PLUS  
ADD  
A IWS

CAPITULATE  
43



g and materials that are in effect on the effective date of this act.  
 Sec. 6. (a) No amusement ride shall be operated in this state unless the operator has satisfactorily completed training that includes, at a minimum:

(1) Instruction on operating procedures for the ride, the specific duties of the operator, general safety procedures and emergency procedures;

(2) demonstration of physical operation of the ride; and

(3) supervised observation of the operator's physical operation of the ride.

(b) No amusement ride shall be operated in this state unless the name of each operator trained to operate the ride and the certificate of each such operator's satisfactory completion of such training, signed and dated by the trainer, is available to any person contracting with the owner for the amusement ride's operation on the premises where the amusement ride is operated, during the hours of operation of the ride.

Sec. 7. No amusement ride shall be operated in this state unless there is posted in plain view on or near the ride, in a location where they can be easily read, safety instructions for the ride.

Sec. 8. (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.

*No PENALTY*

(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 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. Any person contracting with an owner for the amusement ride's operation shall ensure that:

(a) Inspection certificates required by section 3, and amendments thereto, are available;

(b) maintenance and inspection records required by section 4, and amendments thereto, are available; and

(c) safety instructions for the ride are posted as required by section 7, and amendments thereto.

Sec. 10. Whenever a serious injury results from the operation of an amusement ride:

(a) Operation of the ride shall immediately be discontinued;

(b) operation of the ride shall not be resumed until it has been inspected and the qualified inspector has approved resumption of operation; and

(c) the owner, within 30 days after the injury, shall notify the manufacturer of the ride, if the manufacturer is known and in existence at the time of the injury.

Sec. 11. (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.

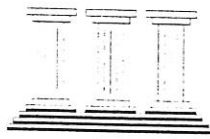
(b) It is a class C misdemeanor knowingly to violate the provisions of section 9, and amendments thereto.

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

Sec. 12. The attorney general, or the county or district attorney in a county in which an amusement ride is located or operated, may apply to the district court for an order enjoining operation of any amusement ride operated in violation of this act.

Sec. 13. The governing body of any city or county may establish and enforce safety standards for amusement rides in addition to, but not in conflict with, the standards established by this act.

Sec. 14. This act shall take effect and be in force from and after January 1, 2002, and its publication in the statute book.



KANSAS TRIAL LAWYERS ASSOCIATION

*Lawyers Representing Consumers*

TO: Members of the House Committee on Local Government

FROM: Gary White  
Kansas Trial Lawyers Association

RE: 2001 HB 2120

DATE: Feb. 1, 2001

Chairman Ray and members of the House Committee on Local Government – thank you for the opportunity to appear before you today to comment on HB 2120. I am Gary White, a Topeka attorney and I am here today on behalf of the Kansas Trial Lawyers Association.

KTLA is in general support of this bill that proposes to safeguard the safety of Kansans, and in particular, our children. But we respectfully suggest a couple of changes to make the bill consistent with current Kansas law.

HB 2120 balances safety and accountability by addressing requirements for equipment inspection, insurance coverage, operator training and rider notification. Well-maintained and regularly inspected equipment is the cornerstone to assuring that amusement rides are safe for those who enjoy them. We support the requirements for regular safety inspections of amusement rides and the bill's mandate that owners of the equipment carry liability insurance in the event that a rider is injured.

In addition, the bill requires that operators of the rides be trained not only in the operation of the ride, but in general safety and emergency procedures. It also requires that easily read safety instructions for each ride posted in plain view for riders. We support all of these requirements which safeguard riders but suggest that Sec. 7 be modified to require the operators to post "safety instructions *and warnings*" for the ride; not just "safety instructions."

We also suggest the additional following amendments to this bill:

Section 8(a) of the bill should be deleted in its entirety because it is confusing and inconsistent with Kansas law. This section states that each patron "accepts the risks" inherent in an amusement ride. The language is patterned after, and is synonymous with, "assumes the risks" which is a common law defense that is no longer applicable in Kansas. The provisions in HB 2120 would therefore be an extreme departure from current Kansas law because it acts as a total bar to recovery. The "assumption of the

*Terry Humphrey, Executive Director*

Jayhawk Tower • 700 SW Jackson, Suite 706 • Topeka, Kansas 66603-3758 • 785.232.7756 • Fax 785.232.7730

E-Mail: [triallaw@ink.org](mailto:triallaw@ink.org)

**HOUSE LOCAL GOVERNMENT**

**2/1/01**

**Attachment 4**

risk" defense is no longer applicable with the Kansas Legislature's enactment of comparative negligence (K.S.A. 60-258a) in 1974.

A 1992 Kansas Supreme Court case unequivocally makes this point. In Tuley v. Kansas City Power & Light Co. (252 Kan. 205) the court stated that "the common-law assumption of risk doctrine is restricted to cases involving employer-employee relationships." A patron's use of an amusement ride has nothing whatsoever to do with employer-employee relationships so assumption of the risk is simply inapplicable.

Similarly, we suggest that subparagraphs (1) through (6) of subsection 8(b) be deleted and replaced with a new section or subsection that simply states that "each patron of an amusement ride has a duty to exercise reasonable (or ordinary) care under all the circumstances." Again, this language is an accurate statement of Kansas law, is consistent with every Kansan's duty to act responsibly under the comparative negligence standard, and substantively aligned with the existing language of subsection 8(b)(1).

If a rider disobeys an appropriate instruction or warning, is under the influence of alcohol or drugs, purposefully disables a safety device, or participates in an irresponsible act that causes or contributes to an injury or death, the operator has every right to target the rider's irresponsible act or fault in defense of a personal injury or death action under the comparative negligence statute. Unlike many states (Missouri, for example), in Kansas the rider would be denied a recovery altogether if the his/her fault for the incident is 50% or more.

The laundry list of issues raised in subparagraphs (1) through (6) of subsection 8(b) creates a host of problems that can simply be eliminated by substituting the foregoing "reasonable (or ordinary) care" standard of conduct that currently exists in Kansas. For example:

1. The list imposes a one-size-fits-all, universal set of duties that just doesn't fit for all amusement rides.
2. Does "influence of alcohol or drugs" include prescription drugs or medications? What does "influence" mean in this context? Kansas law, of course, prohibits operation of a vehicle by someone under the influence which is deemed to mean that the control of the person's mental or physical function is impaired to a degree that the person is rendered incapable of safely driving a vehicle. This standard certainly doesn't uniformly fit all amusement ride situations.
3. If some irresponsible act by a patron is not specifically listed in section 8(b) does it imply that the act is less important or significant in the defense of an injury or death action?
4. Is it improper for patrons on a roller-coaster ride to lift their arms if patrons have been doing it all day and no one has been told to stop?

We also suggest that Sec. 8 (d) (page 5; lines 8 and 9) be deleted. Kansas law already imposes upon parents a legal responsibility or duty to reasonably supervise their children. Furthermore, it is unrealistic to expect parents or guardians to know the specific details of this act. Rather, we suggest, as is stated in Sec. 7, that is more realistic for the owner to

1 testing and materials that are in effect on the effective date of this act.  
2 Sec. 6. (a) No amusement ride shall be operated in this state unless  
3 the operator has satisfactorily completed training that includes, at a  
4 minimum:

5 (1) Instruction on operating procedures for the ride, the specific du-  
6 ties of the operator, general safety procedures and emergency  
7 procedures;

8 (2) demonstration of physical operation of the ride; and

9 (3) supervised observation of the operator's physical operation of the  
10 ride.

11 (b) No amusement ride shall be operated in this state unless the name  
12 of each operator trained to operate the ride and the certificate of each  
13 such operator's satisfactory completion of such training, signed and dated  
14 by the trainer, is available to any person contracting with the owner for  
15 the amusement ride's operation on the premises where the amusement  
16 ride is operated, during the hours of operation of the ride.

17 Sec. 7. No amusement ride shall be operated in this state unless  
18 there is posted in plain view on or near the ride, in a location where they  
19 can be easily read, safety instructions for the ride.

20 Sec. 8. ~~(a) Each patron of an amusement ride, by participation, ac-~~  
21 ~~cepts the risks inherent in such participation of which an ordinary prudent~~  
22 ~~person is or should be aware.~~

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

24 ~~(1) Exercise the judgment and act in the manner of an ordinary pru-~~  
25 ~~dent person while participating in an amusement ride;~~

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

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

30 ~~(4) engage all safety devices that are provided;~~

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

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

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

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

39 (B) a full description of the incident, the injuries claimed, any treat-  
40 ment received and the location, date and time of the injury;

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

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

**Each patron of an amusement ride has a duty  
to exercise reasonable  
(or ordinary) care under all circumstances.**



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

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

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

10 Sec. 9. Any person contracting with an owner for the amusement  
11 ride's operation shall ensure that:

12 (a) Inspection certificates required by section 3, and amendments  
13 thereto, are available;

14 (b) maintenance and inspection records required by section 4, and  
15 amendments thereto, are available; and

16 (c) safety instructions for the ride are posted as required by section  
17 7, and amendments thereto.

18 Sec. 10. Whenever a serious injury results from the operation of an  
19 amusement ride:

20 (a) Operation of the ride shall immediately be discontinued;

21 (b) operation of the ride shall not be resumed until it has been in-  
22 spected and the qualified inspector has approved resumption of opera-  
23 tion; and

24 (c) the owner, within 30 days after the injury, shall notify the man-  
25 ufacturer of the ride, if the manufacturer is known and in existence at  
26 the time of the injury.

27 Sec. 11. (a) It is a class B misdemeanor for an owner or operator of  
28 an amusement ride knowingly to operate, or cause or permit to be op-  
29 erated, any amusement ride in violation of this act.

30 (b) It is a class C misdemeanor knowingly to violate the provisions of  
31 section 9, and amendments thereto.

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

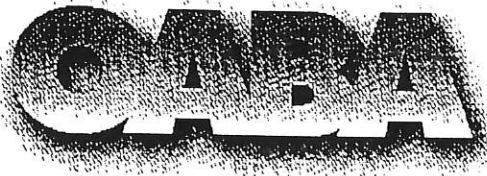
33 Sec. 12. The attorney general, or the county or district attorney in a  
34 county in which an amusement ride is located or operated, may apply to  
35 the district court for an order enjoining operation of any amusement ride  
36 operated in violation of this act.

37 Sec. 13. The governing body of any city or county may establish and  
38 enforce safety standards for amusement rides in addition to, but not in  
39 conflict with, the standards established by this act.

40 Sec. 14. This act shall take effect and be in force from and after  
41 January 1, 2002, and its publication in the statute book.

42

43



**OUTDOOR AMUSEMENT  
BUSINESS ASSOCIATION, INC.**



**1-800-517-OABA**  
**(407) 681-9444**  
**Fax: (407) 681-9445**  
**E-Mail: oaba@aol.com**  
**www.oaba.org**

January 31, 2001

via e-mail and facsimile

**OFFICERS**  
Jeff Blomness  
President  
Danny Huston  
1st Vice President  
Jackie Swika  
2nd Vice President  
James E. Strates  
3rd Vice President  
Dale Merriam  
Treasurer  
Robert W. Johnson  
Executive Director

Representative Gerry Ray, Chairperson  
House Local Government Committee  
Kansas State Capitol  
Topeka, Kansas 66612-1504

**RE: House Bill 2120**  
**Proposed Kansas Amusement Ride Legislation**

**DIRECTORS**  
Eric Bates  
Ron Burback  
Richard Chance  
Alan Cockorham  
Robert Commertord  
Don Deggeller  
John Hanschen  
Bill Johnson  
Jack Keough  
Wayne Kunz  
Guy Leavitt  
Bill Lowary  
Harry Mason  
Wayne McCary  
Stan Minker  
Dawn Murphy  
David Norton  
Gary Otterbacher  
Charles Panacek  
Alfo Phillips  
David Smith  
Morris Vivona  
Mike Williams

Dear Representative Ray:

The Outdoor Amusement Business Association, a trade association representing the mobile amusement industry in America for over 35 years, has worked diligently with state governments to enact reasonable and responsible amusement ride safety laws.

Two years ago, we worked with Representative Tom Sloan, along with others such as Haas & Wilkerson insurance company, the Kansas Fair Association, and the fixed site parks in the state to draft a bill that would protect patrons on amusement rides. Kansas is one of a few states in the country that has no amusement ride laws. Many industry professionals testified before House and Senate committee hearings on this bill. Unfortunately House Bill No. 2040 was changed dramatically and did not make it out of Senate committee.

It is my understanding that a hearing on Representative Sloan's new bill is scheduled for Thursday, this week and would ask that it be postponed since our industry is involved in an American Society for Testing and Materials (ASTM) conference on amusement ride standards and a carnival industry trade show starting this week and will not be able to attend this hearing. We would prefer a timetable later in February.

I am encouraged that your Committee will discuss this bill that the amusement industry in general supports.

We have written to the bill's sponsor asking that he consider the following. In addition, I have asked two questions concerning state government oversight and inspection decals.

1. There should be some type of penalty for patrons in the rider safety provisions in Section 8 that could be put on ride signs, similar to what other states have enacted, warning patrons that they may be prosecuted or fined for violating the safe conduct of themselves or others. Perhaps a class C or B misdemeanor similar to what

**PAST PRESIDENTS**  
Sam Johnston - 1999  
Buddy Merten - 1998  
Richard Janas - 1997  
Jean Clair - 1996  
James Murphy - 1995  
Dominic Vivona - 1994  
Bill Dillard, Sr. - 1993  
Tom Atkins - 1992  
\*Red Wood - 1991  
Billy Burr - 1990  
Bob Coleman, Sr. - 1989  
Milt F. Kaufman - 1988  
Andy Andersen - 1987  
John Vivona - 1986  
Mike Farino - 1985  
James H. Drew III - 1984  
Gerald L. Murphy - 1983  
John Camp - 1982  
\*Buster L. Brown - 1981  
\*Hub Luehrs - 1980  
Lloyd Hilligoss - 1979  
\*Hal F. Eilort - 1978  
\*Alfred H. Kunz - 1977  
RE. Reilhoffer, Jr. - 1976  
Bernard P. Thomas - 1975  
E. James Strates - 1974  
\*Rod Link - 1973  
C. J. Sadlmayr - 1972  
\*John Portemont - 1971  
\*William T. Collins - 1966-70  
W. G. Wade - 1965  
\*deceased

1035 S. SEMORAN BOULEVARD, SUITE 1045A, WINTER PARK, FLORIDA 32792  
PROVIDING OVER 35 YEARS OF SERVICE TO OUR MEMBERS

**HOUSE LOCAL GOVERNMENT**

**2/1/01**

Page Two  
Chairperson Rey  
House Local Government Committee

some 18 other states have enacted in their patron safety laws and regulations. National statistics indicate that some 70% of incidents on amusement rides are caused by patron behavior.

2. We believe the state would be making a public safety mistake by **not regulating all amusement rides** operating in the state. To exempt certain rides in "political subdivisions of the state" or those owned or operated by a "not-for-profit organization" may be opening unusual liability issues, when other amusement rides are regulated and insured.
3. The proposed bill has no state government oversight. Will there be a state agency monitoring amusement rides or will this be left up to the contracting sponsor of the event to monitor compliance (i.e. fair, festival, church, etc.)?
4. If a visible inspection decal is to be "posted in plain view on or near the amusement ride", will this be a Kansas permit, or will you accept another state's inspection decal or permit?

Should you decide to hear this bill on Thursday, I would like the OABA to be on record supporting this legislation, with consideration for the changes enumerated in items 1 and 2, above. Would you please give copies of this letter to others on your committee.

I am available to discuss this legislation with you or other committee members by calling me at 800-517-6222. Again, we appreciate the state's concern for patron safety and regulation of amusement rides.

Sincerely,



Robert W. Johnson  
Executive Director



6  
**TESTIMONY**  
concerning House Bill No. 2161  
**re. County Construction Projects**

Presented by Randy Allen, Executive Director  
Kansas Association of Counties  
February 1, 2001

Madam Chair and members of the committee, my name is Randy Allen, Executive Director of the Kansas Association of Counties. I am here today to express support for a "balloon" to House Bill No. 2161, a bill concerning the award of county construction contracts for courthouses, jails, or other county buildings. The balloon, and not the printed bill, captures our intention in seeking this legislation.

The Kansas Association of Counties requested introduction of this legislation after hearing from a number of our member counties - particularly smaller counties - who find it difficult to interest small contractors in relatively small remodeling jobs in county facilities including courthouses.

Currently, K.S.A. 19-214 requires that all contracts for the expenditure of county monies in excess of \$10,000 be awarded to the lowest and best bid and that the person or company receiving the contract obtain a surety bond in the amount of the contract to guarantee the faithful performance of the contract. The \$10,000 threshold requiring both a public bidding and a surety bond in the same amount was established in 1980, when the threshold was raised from \$2,000 to \$10,000.

We are **not seeking** to change the threshold above which public bidding is required. The threshold for counties is currently \$10,000 and, with the language in the balloon, would remain at \$10,000. We do, however, urge the committee to consider increasing the threshold above which a surety bond is required from the current \$10,000 to \$40,000.

Our rationale for requesting the change is feedback from our members who experience difficulty interesting multiple contractors in small remodeling or construction jobs in county facilities. Smaller and often newer local contractors who have been in business for relatively shorter periods of time have often not developed the history that allows them to provide the surety bonds for small projects and therefore cannot bid on the work. As a result, competition is limited and the county receives no bids or very few bids. As competition is limited, the cost to the county and its taxpayers increases.

6206 SW 9th Terrace  
Topeka, KS 66615  
785•272•2585  
Fax 785•272•3585  
email kac@ink.org

**HOUSE LOCAL GOVERNMENT**  
**2/1/01**  
**Attachment 6**



It is our understanding that the parallel threshold for requiring sureties to be posted in the case of public construction for other units of government (i.e. the state, cities, unified school districts) pursuant to K.S.A. 60-1111 is \$40,000. Particularly as counties adapt county courthouses and jails for expanded uses (often related to their responsibilities to provide office and work space for the judicial system), it would seem that an increase in the threshold to the same level established for other units of government makes sense.

I want to be clear that, wherever the threshold is set, counties would always be free at their discretion to require surety bonds for contracts less than the amount established in state law. This is a matter of local discretion.

In summary, we seek a modernization of the current statute as it pertains to surety bonds only and do not seek to amend the threshold at which public bidding of a project is required. Thank you for your consideration of our request.

Attachment (1): Balloon to HB 2161

1:00 PM REVISOR OF STATUTES FAX NO. 9132966668 P. 02

Session of 2002

# HOUSE BILL No. 2161

By Committee on Local Government

1-24

AN ACT concerning counties; concerning the awarding of certain contracts; amending K.S.A. 19-214 and repealing the existing section.

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

Section 1. K.S.A. 19-214 is hereby amended to read as follows: 19-214. (a) Except as provided in subsection (b) and in K.S.A. 19-216a, ~~and amendments thereto~~, all contracts for the expenditure of county moneys ~~in excess of \$40,000~~ for the construction of any courthouse, jail or other county building, ~~or the construction of any bridge in excess of \$10,000, or any bridge~~ shall be awarded, on a public letting, to the lowest and best bid. The person, firm or corporation to whom ~~the contract~~ may be awarded shall give and file with the board of county commissioners a good and sufficient surety bond by a surety company authorized to do business in the state of Kansas, ~~to~~. *Such bond shall* be approved by the county attorney or county counselor, in the amount of the contract; and conditioned for the faithful performance of the contract.

\$10,000

a contract for the construction of any bridge or a contract in excess of \$40,000 for the construction of a courthouse, jail or other county building

(b) The provisions of subsection (a) shall not apply: (1) To the expenditure of county funds for professional services; (2) to the provisions of K.S.A. 68-521, and amendments thereto; or (3) to the purchase of contracts of insurance.

Sec. 2. K.S.A. 19-214 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

HOUSE LOCAL GOVERNMENT  
2/1/01  
Attachment 5a

Testimony of Dan Harden  
Before the House Local Government Committee  
Regarding House Bill 2161  
1 February 2001

Representative Gerry Ray  
Chair

Representative Ray, and members of the House Local Government Committee; my name is Dan Harden. I am a registered professional engineer in the state of Kansas. I have been employed for the past 25 years as the Riley County engineer. I thank you for allowing me the opportunity to testify today.

I am here today to support House Bill 2161. My support is founded on the following reasons.

K.S.A. 19-214, as it is now written, functions to restrain competition when counties bid small building improvement projects. Here is how it works to do that.

K.S.A. 19-214 requires a surety bond on all construction contracts counties bid that are in excess of \$10,000.

K.S.A. 60-1111 requires a performance bond for all contracts for construction contracts counties bid that are in excess of \$40,000.

Small independent local contractors are often interested in bidding on small county construction projects. These small independent local contractors are often just getting started in the construction business and have developed no bonding capacity yet with the surety companies that provide the bonds. Because of this situation these contractors cannot get the surety bond, and therefore cannot bid on the work. This dramatically limits competition. In some cases this situation has eliminated all of the competition, and the county receives no bids. We all know when competition is limited prices go up.

This proposal sets the surety bond limit equal to the performance bond limit. What this does is increases the surety/performance bond limit to \$40,000, thus allowing increased competition to take place in the bidding for those county construction contracts between \$0 and \$40,000.

The county still faces the risk of a contractor not paying for labor, equipment, or materials. Previously this risk was born by the surety company. The contractor paid the surety company for the bond and then passed the cost of the bond on to the county. Thus the county eventually paid for the surety coverage. Under this proposal, the county self insures this risk. If there are unpaid labor, equipment, or material claims under this

proposal, the county would be required to satisfy those claims.

It is the belief of the Kansas Association of Counties that the money saved by the public through increased competition will be greater than the occasional lose paid out by self insuring potential unpaid claims on a project. In other words the public gets a bigger bang for its tax dollar with this proposed legislation. That is why I support it, and urge you to do so.

I stand for any questions.