

Kansas Amusement Ride Act; Replacement of 2017 Law; House Sub. for SB 86

House Sub. for SB 86 enacts law and amends the Kansas Amusement Ride Act and the Amusement Ride Insurance Act by addressing or making changes related to permitting, registration, moneys collected, injury reporting, death of patrons, insurance, definitions, qualified inspectors, inspections, records, standards, testing, violations, and rule and regulation authority.

[*Note:* House Sub. for SB 86 repeals the provisions of House Sub. for SB 70, which was signed into law April 24, 2017, and replaces them as described below.]

Permits

The bill prohibits any ride from being operated without a valid annual permit issued by the Kansas Department of Labor (Department). Applications for permits are to be made to the Secretary of Labor (Secretary). The application is required to include the following:

- Name of the owner and operator;
- Location of the amusement ride or the location where such ride is stored if not in use;
- Valid certificate of inspection;
- Proof of insurance; and
- Certification the ride meets the applicable ASTM International F24 Committee standards.

Additionally, an applicant is required to remit a permit fee for each ride to the Department. The fees are as follows:

- Class A permanent ride, \$75;
- Class B permanent ride, \$100;
- Temporary ride, \$30; and
- Ride owned by a municipality or non-profit entity, \$10.

Registration

In addition to permitting requirements for each ride, owners are required to register with the Department and pay the following annual registration fees, determined by the ride's location, regardless of the number of rides owned:

- Rides at a permanent location, \$500;
- Rides at a temporary location, \$250; and
- Rides owned by a municipality or non-profit at a permanent or temporary location, \$50.

Amusement Ride Safety Fund

The bill creates the Amusement Ride Safety Fund (Fund) to be administered by the Department. All fees collected for permits, registrations, or violations under the Kansas Amusement Ride Act are to be deposited in the Fund. The bill requires all expenditures from the Fund to be used for administration and enforcement of the Kansas Amusement Ride Act.

Injury Reporting

The bill replaces injury reporting requirements in prior law with a new section, requiring patrons (or their guardians) who become injured while on a ride to report their injuries in writing to the park owner or operator before leaving the premises. Such required reports include:

- Name, address, and phone number of the patron;
- A full description of the incident including injuries and treatment;
- The cause of the injury (if known); and
- The names, addresses, and phone numbers of witnesses.

If a report cannot be filed immediately due to the nature of the injury, the bill requires the report be filed as soon as possible.

In addition, owners of rides are required to prominently place signage at the point of admission or ticket sale, and in at least two places near each ride. The bill requires such signs notify patrons of their duty to report injuries and give instructions on how to contact the owner's representatives if immediate assistance is needed and on how to make an injury report.

Ride owners are required to notify the Department within 72 hours of any serious injury, injury caused by malfunction or failure of an amusement ride, or injury caused by either operator or patron error. If a serious injury occurred, the bill requires the equipment or conditions be preserved for Department investigation, and the ride is to be immediately removed from service until an investigation is completed or deemed unnecessary by the Secretary. Further, if an investigation is not commenced within 24 hours after the Department received notification of injury, an investigation will be deemed unnecessary.

Death of a Patron

In the event of the death of a patron, the bill requires the owner to notify the Department as soon as possible by telephone and by written notification within 24 hours of the incident. If the death is related to a major malfunction of a ride, an investigation is required and must commence within 24 hours of initial notice of injury. No part of the ride may be moved or repaired without written approval of the Secretary. Such provisions are not to be construed to hinder emergency response personnel from performing their duties or to prevent elimination of obvious safety hazards. Ride owners are required to provide complete access to the amusement ride and all related premises for the purposes of investigation and are also required to provide all information relating to the cause of injury to the Department.

Liability Insurance

Continuing law requires ride owners to carry liability insurance in order to operate rides, and it requires such insurance policies be written by companies doing business in Kansas. The bill also allows a ride owner to hold a policy written by a surplus lines insurer.

The bill changes the required coverage, from at least \$1 million to not less than \$1 million per occurrence and annual aggregate coverage of \$2 million. The State and any political subdivisions that own rides and self-insure or participate in a public-entity self-insurance pool meet the insurance requirement. The bill removes an insurance exemption for a not-for-profit organization organized under the laws of Kansas.

Definitions

The definition for “amusement ride” is amended to include all rides and devices specified in the ASTM International Committee F24 standards, specifically including boat rides, water slides, inflatable devices, commercial zip lines, trampoline courts, and go-karts. In addition, Class A rides are defined as rides intended for patrons age 12 and younger, and Class B rides are defined as any ride not classified as a Class A ride.

The definition for “home-owned amusement ride” is amended to include only rides owned by an individual (changed from owned by a not-for-profit entity) and operated solely within a single county for strictly private use. The bill removes language related to liability insurance policies covering home-owned amusement rides.

The definition for “nondestructive testing” is amended to require testing be conducted in accordance with ASTM F747 standards.

The definition for “operator” is amended to include a person supervising the operations of a ride, in addition to those persons engaged in or directly controlling the operations of a ride, as described in continuing law.

The definition for “serious injury” is amended to include other injury or illness that requires immediate medical treatment.

A definition for “water slide” is added and includes slides that are at least 15 feet in height and use water to propel the patron through the ride.

Qualified Inspectors

The bill also amends the definition of “qualified inspector.” In order to be considered “qualified,” the inspector must:

- Be a licensed professional engineer with at least two years of experience in the amusement ride field, including:
 - At least one year of ride inspection experience under a qualified inspector for a manufacturer, government agency, amusement park, carnival, or insurance company; and
 - At least one year practicing any combination of amusement ride inspection, design, fabrication, installation, maintenance, testing, repair, or operation;
- Provide satisfactory evidence of five years of experience in the amusement ride field, a minimum of which must be:
 - Two years of ride inspection under a qualified inspector for a manufacturer, government agency, amusement park, carnival, or insurance underwriter; and
 - Remaining experience consisting of any combination of amusement ride inspection, design, fabrication, installation, maintenance, testing, repair, or operation; or
- Have received qualified training from a third party, such as:
 - Level II certification from the National Association of Amusement Ride Safety Officials (NAARSO);
 - Level II certification from the Amusement Industry Manufacturers and Suppliers International;
 - Qualified inspector certification from the Association for Challenge Course Technology;
 - Pennsylvania Department of Agriculture—general qualified inspector status; or
 - Other similar qualification from another nationally recognized organization.

Inspections

Initial Inspections

Each ride is required to have a valid certificate of inspection, signed and dated by the inspector prior to operation. The certificate of inspection must be available to any person contracting with a ride owner for the operation of the ride.

Annual Inspections

The bill requires each amusement ride to be inspected by a qualified inspector at least every 12 months. Inspection decals issued by the Department must be posted in plain view on or near each ride. The bill requires inspections be paid for by the owner of a ride, or the state agency or political subdivision.

Daily Inspections

The bill requires daily inspections to be conducted and recorded by the operator. The bill requires such daily inspections to include inspection of any equipment identified for daily inspection by applicable codes or manufacturer recommendations. The Secretary must conduct unannounced compliance audits of rides at both temporary and permanent locations. A warning citation will be issued for an owner or operator for a first violation.

The bill directs the Secretary to develop an inspection checklist, to be posted on the Department website.

The bill removes references to self-inspection, as the bill requires qualified inspectors to be employed by third parties.

Records

The bill requires park owners to maintain records related to construction, repair, and maintenance of operations, and including safety training records, inspection records, maintenance records, and ride operator training activities. Such records must be available to the Department at reasonable times, including at the request of the Department during inspections. Further, the bill requires the records be available at the location where the ride or device is operated and be maintained for at least three years.

Standards for Construction, Maintenance, Operation, and Repair of Rides

The bill requires rides be constructed, maintained, operated, and repaired in accordance with ASTM standards adopted by the ASTM International F24 Committee, as published in the ASTM International Standards Volume 15.07.

Nondestructive Testing

The bill continues requirements for nondestructive testing of rides in accordance with either the manufacturer recommendations or in conformance with standards at least equivalent to ASTM standards and specifies the ASTM standards adopted by the ASTM International F24 Committee, as published in the ASTM International Standards Volume 15.07, whichever is applicable.

Violations of the Kansas Amusement Ride Act

Under the provisions of the bill, it is a Class B misdemeanor to operate a ride without a valid permit issued by the Secretary.

The Department is allowed to issue a notice of violation if a ride is out of compliance with the Kansas Amusement Ride Act. Such notice may include an order to cease and desist operation of a ride until the violations are corrected. Additionally, within ten business days after a notice of a violation is issued, the person issued the notice may request, in writing, an informal conference with the Department. If no request for an informal conference is made, the provisions of the notice will become final. If the notice of violation is not resolved in the specified time frame, the Department is allowed to seek judicial enforcement of the notice of violation, or a judicial enforcement order may be issued.

The bill authorizes the Secretary to impose a fine of up to \$1,000 for any violation of the law. All proceedings regarding violations of the Kansas Amusement Ride Act are subject to the Kansas Administrative Procedure Act. Fines will be deposited in the Amusement Ride Safety Fund.

All sections containing criminal penalties will be implemented beginning January 1, 2018. No criminal prosecution for violations of the Act may be brought prior to that date. Additionally, the Secretary is prohibited from enforcing the Act prior to the date of publication of the rules and regulations required under the Act. The bill requires such rules and regulations be adopted by January 1, 2018. After adopting rules and regulations, the Secretary is required to provide the owner or operator of an amusement ride a reasonable period of time to comply with the provisions of the Act.

Rule and Regulation Authority and ASTM Standards

The bill requires the Secretary to adopt rules and regulations on or before January 1, 2018, to implement amendments made to the Kansas Amusement Ride Act and the Amusement Ride Insurance Act. The bill requires those rules and regulations specify nationally recognized organizations that issue certifications or other evidence of qualification to inspect amusement rides, and that require education, experience, and training at least equivalent to that required for a level II certification from NAARSO as of July 1, 2017.

The bill specifies all references to the ASTM standards shall be to those standards adopted by the ASTM International F24 Committee, as published in ASTM International Standards Volume 15.07, or any later version adopted by the Secretary in rules and regulations.