

CORRECTED
SESSION OF 2017

**SUPPLEMENTAL NOTE ON HOUSE SUBSTITUTE FOR
SENATE BILL NO. 86**

As Amended by House Committee of the Whole

Brief*

House Sub. for SB 86 would enact law and amend 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 70 was signed into law by the Governor on April 24, 2017. House Sub. for SB 86 would repeal those provisions signed into law and replace them as follows. More information on the specific amendments made by both the House Committee on Federal and State Affairs and the House Committee of the Whole can be found in the background section of this note.]

Permits

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

- Name of the owner and operator;

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- 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 American Society for Testing and Materials (ASTM) International F24 Committee standards.

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

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

Registration

In addition to permitting requirements for each ride, owners would be required to register with the Department and pay the following annual registration fees, determined by ride 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 would create 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 would be deposited in the Fund. The bill would require all expenditures from the Fund to be used for administration and enforcement of the Kansas Amusement Ride Act.

Injury Reporting

The bill would remove injury reporting requirements in current law and, in a new section, require 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 would 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 could not be filed immediately due to the nature of the injury, the bill would require the report be filed as soon as possible.

In addition, owners of rides would be required to prominently place signage at the point of admission or ticket sale, and in at least two places near each ride. The bill would require 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 would also be required to notify the Department within 72 hours of any serious injury; injury caused by malfunction or failure of an amusement ride; or injuries caused by either operator or patron error. If a serious injury occurred, the bill would require the equipment or conditions to be preserved for Department investigation, and the ride would be immediately removed from service until an investigation was completed or deemed unnecessary by the Secretary. Further, if an investigation was not commenced within 24 hours after the Department received notification of injury, an investigation would be deemed unnecessary.

Death of a Patron

In the event of the death of a patron, the bill would require 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 would be required and must commence within 24 hours of initial notice of injury. No part of the ride could be moved or repaired without written approval of the Secretary. Such provisions would not be construed to hinder emergency response personnel from performing their duties or to prevent elimination of obvious safety hazards. Ride owners would be required to provide complete access to the amusement ride and all related premises for the purposes of investigation and would also be required to provide all information relating to the cause of injury to the Department.

Liability Insurance

Current law requires ride owners to carry liability insurance in order to operate rides, and requires such insurance policies be written by companies doing business in Kansas. The bill would also allow policies written by a surplus lines insurer.

Currently, these insurance policies must provide at least \$1 million of coverage. The bill as amended, would require coverage in an amount not less than \$1 million per occurrence and would also require 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 would meet the insurance requirement. The bill would remove an insurance exemption for a not-for-profit organization organized under the laws of Kansas.

Definitions

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

The definition for “home-owned amusement ride” would be amended to include only rides owned by an individual and operated solely within a single county for strictly private use. The bill, as amended, would remove language related to liability insurance policies covering home-owned amusement rides.

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

The definition for “operator” would be 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 current law.

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

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

Qualified Inspectors

The bill would also amend the definition of “qualified inspector.” In order to be considered “qualified,” the inspector would have to:

- 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; or
- 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:
 - Attainment of level II certification from the National Association of Amusement Ride Safety Officials (NAARSO);
 - Attainment of level II certification from the Amusement Industry Manufacturers and Suppliers International (AIMS);
 - Attainment of a qualified inspector certification from the Association for Challenge Course Technology (ACCT);
 - Pennsylvania Department of Agriculture—general qualified inspector status; or
 - Other similar qualification from another nationally recognized organization.

Inspections

Initial Inspections

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

Annual Inspections

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

Daily Inspections

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

The bill, as amended, would direct the Secretary to develop an inspection checklist, which would be posted on the Department website.

The bill would also remove references to self-inspection, as the bill would require qualified inspectors to be employed by third parties.

Records

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

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

The bill would require 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 would continue 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 would specify 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 would be a Class B misdemeanor to operate a ride without a valid permit issued by the Secretary.

The Department would be allowed to issue a notice of violation if a ride is out of compliance with the Kansas Amusement Ride Act. Such notice could 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 was issued, the person issued the notice could request, in writing, an informal conference with the Department. If no request for an informal conference is made, the provisions of the notice would become final. If the notice of violation is not resolved in the specified time frame, the Department would be allowed to seek judicial enforcement of the notice of violation, or a judicial enforcement order could be issued.

The bill would authorize 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 would be subject to the Kansas Administrative Procedure Act.

Fines would be deposited in the Amusement Ride Safety Fund.

All sections containing criminal penalties would be implemented beginning January 1, 2018. No criminal prosecution for violations of the Act could be brought prior to that date. Additionally, the Secretary would be prohibited from enforcing the Act prior to the date of publication of the rules and regulations required under the Act. The bill would require such rules and regulations be adopted by January 1, 2018. After adopting rules and regulations, the Secretary would be 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 would require the Secretary to adopt rules and regulations on or before January 1, 2018, to implement the Kansas Amusement Ride Act. The bill would require those rules and regulations specify nationally recognized organizations that issue certifications or other evidence of qualification to inspect amusement rides, and determine required education, experience, and training at least equivalent to that required for a level II certification from NAARSO as of July 1, 2017.

Additionally, the bill would specify 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.

Background

SB 86

On May 11, 2017, the House Committee on Federal and State Affairs removed the contents of SB 86 (concerning amendments to the Kansas Open Records Act). The House Committee then further amended House Sub. for SB 70, which was signed into law on April 24, 2017. Those amended contents were placed into SB 86.

The House Committee amended the provisions of House Sub. for SB 70 to:

- Delay the effective date of the Act to July 1, 2018 (removed by the House Committee of the Whole);
- Require a valid certificate of inspection to be provided for permit issuance;
- Add commercial zip lines to the definition of “amusement ride”;
- Amend the definition for “serious injury” to include other injury or illness that requires immediate medical treatment; and
- Amend the requirement of inspections by the Secretary of Labor to include compliance audits of amusement rides.

The House Committee of the Whole amended the bill to:

- Change the implementation date of sections containing criminal penalties to January 1, 2018;
- Direct the Secretary to develop rules and regulations on or before January 1, 2018;

- Provide that the Act could not be enforced until rules and regulations are in place;
- Require the Secretary to allow amusement ride owners and operators a reasonable period of time to comply with the Act; and
- Remove language related to liability insurance policies covering home-owned amusement rides.
- Remove language delaying the effective date of all sections of the bill.

[*Note:* House Sub. for SB 70, as enacted, removed provisions related to liability insurance requirements for home-owned amusement rides. House Sub. for SB 86, as amended by the House Committee on Federal and State Affairs, would have revived those provisions. However, the House Committee of the Whole removed that language.]

House Sub. for SB 70—Amusement Ride Act

House Sub. for SB 70 was signed into law by the Governor on April 24, 2017. The background information for this bill is below.

The House Committee amended SB 70 by removing the language contained in SB 70 (the original bill pertained to amendments to the Kansas Open Meetings Act). The language of SB 70, as amended by the Senate Committee, was placed into HB 2128 by the Senate Committee of the Whole on March 28, 2017.

The House Committee then removed all contents of SB 70 as amended by the Senate Committee on Federal and State Affairs, and inserted substitute language for HB 2389, as described below.

The House Committee of the Whole adopted an amendment that reflects the substitute bill adopted by the House Committee on Federal and State Affairs and makes other technical changes. The House Committee of the Whole amendment addresses insurance requirements, nondestructive testing standards, inspections, and inspection decals.

The fiscal note prepared by the Division of the Budget on SB 70, as introduced, is no longer applicable.

HB 2389—Amusement Ride Regulations

HB 2389 was introduced by the House Committee on Federal and State Affairs at the request of Representative Barker. In the House Committee hearing, Representative Whitmer, a representative of the Kansas Society of Professional Engineers, and a private citizen testified in support of amusement park safety reform.

A professional engineer and representatives of Toby's Carnival, the League of Kansas Municipalities, the Kansas Association of Property and Casualty Insurance Companies, Property Casualty Insurers, and the National Association of Professional Surplus Lines Offices testified as neutral. Written-only neutral testimony was provided by the International Association of Amusement Parks and Attractions and the Outdoor Amusement Business Association.

Representatives of Fun Services of KC and Evans Midland Empire Shows testified in opposition to the bill as introduced. Written-only opponent testimony was provided by Ottaway Amusement Company.

The House Committee adopted a balloon amendment, creating a substitute version of HB 2389. The House Committee then removed the contents of SB 70 as amended by the Senate Committee on Federal and State Affairs, and

inserted the language approved for the substitute version of HB 2389.

According to the fiscal note prepared by the Division of the Budget on HB 2389, as introduced, the Department estimates the bill would increase its expenditures from the State General Fund (SGF) by approximately \$105,000 beginning in FY 2018 for 1.00 investigator full-time equivalent position to issue and track the permitting process. The estimate includes additional costs for permitting software, office space and equipment, and fees paid to the Office of Administrative Hearings.

The Department estimates the bill, as introduced, would increase annual revenues to the SGF by approximately \$20,000 from permit fees and fines paid by 15 traveling carnivals and 16 permanent amusement parks currently operating in Kansas. The Office of Administrative Hearings (Office) indicates it has no data with which to estimate the number of fines that would be imposed by the Department, appealed, and then referred to its office. However, the agency anticipates the number and level of complexity of those cases brought under HB 2389 would be negligible. The Office indicates it charges \$100 per hour for services rendered, which would cost the Department approximately \$841 per case.

Any fiscal effect associated with enactment of HB 2389 is not reflected in *The FY 2018 Governor's Budget Report*.