

No. 1984-81

AN ACT

SB 298

Providing for the inspection of amusement rides and attractions; granting powers and imposing duties on the Department of Agriculture; creating the Amusement Ride Safety Advisory Board; and imposing civil and criminal penalties.

TABLE OF CONTENTS

- Section 1. Short title.
- Section 2. Definitions.
- Section 3. Nonapplication of act.
- Section 4. Powers and duties of Department of Agriculture.
- Section 5. Amusement Ride Safety Advisory Board.
- Section 6. Powers and duties of board.
- Section 7. Inspections.
- Section 8. Passenger conduct.
- Section 9. Variances.
- Section 10. Notice.
- Section 11. Hearings.
- Section 12. Appeals.
- Section 13. Records and reports.
- Section 14. Insurance.
- Section 15. Civil penalties.
- Section 16. Criminal penalties.
- Section 17. Payment of cost of administering act.
- Section 18. Commonwealth not liable.
- Section 19. Expiration of advisory board.
- Section 20. Effective date.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the Amusement Ride Inspection Act.

Section 2. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Amusement attraction.” Any building or structure around, over or through which people may move or walk, without the aid of any moving device integral to the building or structure, that provides amusement, pleasure, thrills or excitement. The term does not include any enterprise prin-

principally devoted to the exhibition of products of agriculture, industry, education, science, religion or the arts.

“Amusement park.” A tract or area used principally as a location for permanent amusement structures or rides.

“Amusement ride.” Any 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.

“ASTM.” American Society for Testing Materials.

“Board.” The Amusement Ride Safety Advisory Board.

“Carnival.” An itinerant enterprise consisting principally of temporary amusement structures or mechanical rides.

“Department.” The Department of Agriculture.

“Fair.” An enterprise principally devoted to the periodic and recurring exhibition of products of agriculture, industry, education, science, religion or the arts that has one or more amusement rides or attractions operated in conjunction therewith in either temporary or permanent structures.

“Kiddy ride.” Any amusement ride or attraction designed for use by children up to 12 years of age.

“Major ride.” Any amusement ride or attraction that is not a kiddy ride.

“New amusement ride or attraction.” An amusement ride or attraction of a design not previously operated in the State and for which no standards and regulations have been adopted.

“OABA.” Outdoor Amusement Business Association.

“Operator.” Any person or persons actually engaged in or directly controlling the operation of an amusement ride or attraction.

“Owner.” A person who owns an amusement ride or attraction. The term excludes the State or its political subdivisions.

“Permanent structure.” A structure, enclosure or arrangement of parts, used or intended to be used for or as an amusement ride or attraction, that is erected to remain a lasting part of the premises.

“Qualified inspector.” A person certified by the department, who, by education, training or experience, is knowledgeable with amusement ride operating manuals and the psychological effects each ride has upon a passenger. Such person shall also be experienced in the erection and dismantling of amusement rides and shall be familiar with the specific equipment with that particular operator.

“Secretary.” The Secretary of Agriculture.

“Temporary structure.” A structure, enclosure or arrangement of parts, used or intended to be used for or as an amusement ride or attraction, that is relocated from time to time with or without disassembly.

Section 3. Nonapplication of act.

This act does not apply to single passenger, coin-operated, manually, mechanically or electrically operated rides, except where admission is charged for the use of the equipment.

Section 4. Powers and duties of Department of Agriculture.

The department or its authorized representative shall have the following powers and duties:

- (1) Administer and enforce the provisions of this act.
- (2) Prescribe safety standards relating to the operation and maintenance of amusement rides or attractions, with recommendations from the board, taking into consideration those standards adopted by the ASTM, F-24 Committee and by OABA.
- (3) Issue notices for violations of this act or any rule, regulation or standard promulgated pursuant to this act.
- (4) Permit variances.
- (5) Impose civil penalties in accordance with section 15.
- (6) Establish recordkeeping and reporting procedures.
- (7) Conduct any and all hearings in accordance with Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).
- (8) Administer oaths, take or cause to be taken depositions, issue subpoenas and compel the attendance of witnesses and the production of papers, books, documents, records and other testimony.
- (9) Adopt such rules and regulations as are necessary to effectively administer the provisions of this act.

Nothing in this act shall prohibit the department from conducting or enforcing necessary inspections and investigations.

Section 5. Amusement Ride Safety Advisory Board.

(a) Establishment.—There is hereby established under the jurisdiction of the department a board known as the Amusement Ride Safety Advisory Board.

(b) Composition.—The board, appointed by the Governor, shall consist of nine members of whom one member shall be a representative of the amusement ride manufacturers, one shall be the President of the Pennsylvania State Showman's Association, one shall be the Chairman and one shall be the President of the Pennsylvania Amusement Park Association, one shall be the President of the Pennsylvania County Fairs Association, one shall be a mechanical engineer and two shall represent the public. The secretary shall be designated by the Governor as the chairman.

(c) Terms of members.—The members of the board shall serve at the pleasure of the Governor. All members shall serve until their successors are appointed and qualified. Vacancies shall be filled by appointment for the unexpired term in the same manner as the original appointments.

Section 6. Powers and duties of board.

(a) Advise and consult.—The board shall advise, consult, make recommendations and propose reasonable rules, regulations and standards to the department for the prevention of conditions detrimental to the public in the use of amusement rides and attractions as the board finds necessary for the protection and safety of the public upon the basis of circumstantial evidence and information available to or developed by the department or upon circumstantial evidence and information submitted by any interested person at

a public hearing held in accordance with subsection (b). The department shall make such recommendations to the board regarding rules, regulations and standards as it deems necessary to carry out the intent of this act.

(b) **Hearings.**—The board shall hold public hearings at such time and place as the board may specify to carry out its responsibilities. All hearings shall be conducted pursuant to the act of July 19, 1974 (P.L.486, No.175), referred to as the Public Agency Open Meeting Law.

(c) **Recommendations.**—The board shall submit to the department its recommendations concerning proposed rules, regulations and standards, together with a report, indicating the need for the proposals and summarizing the testimony presented at any public hearing and any other information or technical data available to the board.

Section 7. Inspections.

(a) **Inspection of devices.**—The selected owner or lessee shall have inspected by a qualified inspector:

(1) Any amusement park ride and attraction on a monthly basis.

(2) Any fair and carnival amusement ride and attraction before its operation at each new location.

(3) Any new or modified amusement ride and attraction before its public operation commences.

(b) **Owner or lessee.**—An owner or lessee of a new, modified or reconstructed amusement ride or attraction shall notify the department before beginning operation.

(c) **Inspection affidavits.**—If an inspection discloses that an amusement ride or attraction complies with all relevant provisions of the act and the adopted standards and regulations, the owner or lessee shall file with the department a written affidavit, affirmed by the qualified inspector, that the inspection of said ride or attraction was conducted and that said ride is in compliance with subsection (a) and the adopted standards and regulations. The affidavit shall be filed within 48 hours of the inspection of said ride or attraction and shall be filed by mail.

(d) **Serious injury or death.**—When a serious injury, death or fire occurs as a result of the operation of an amusement ride or attraction, the operator shall immediately close the attraction or ride until it has been inspected, repaired and declared safe for operation by a qualified inspector. However, in the event of a death, the ride or attraction may not be reopened until declared safe by the insurance company of the operator.

Section 8. Passenger conduct.

(a) **Refusal.**—The owner shall have the right to refuse any member of the public admission to a ride if, in the opinion of the operator, the passenger's bearing or conduct will endanger himself or other member of the public.

(b) **Refusal for health reasons.**—The owner shall have the right to refuse admittance to any member of the public to any ride if, in the opinion of the operator, the intended passenger's health or physical condition makes it unsafe for him or her to use the ride.

(c) **Refusal for ride restrictions.**—The owner shall refuse admittance to any member of the public seeking admission to a major ride according to the

restrictions of the major ride. Legible signs to that effect shall be posted in close proximity to the ride in full view of the public seeking admission to major rides.

Section 9. Variances.

(a) Application.—Any affected owner or lessee of amusement rides or attractions may apply in writing to the department for an order for a variance from any rule, regulation or standard.

(b) Exceptions.—The secretary may grant exceptions from the rules, regulations and standards adopted by the department pursuant to this act if:

- (1) it is evident that action is necessary to prevent undue hardship; or
- (2) existing conditions prevent practical compliance and reasonable safety of the public can, in the opinion of the secretary, be assured.

Section 10. Notice.

(a) Notification.—If the secretary has reason to believe that an owner or lessee of an amusement ride or attraction has failed to comply with the provisions of this act, the secretary shall notify the owner or lessee by certified mail:

- (1) Of the violation and the imposition of any penalty in accordance with sections 15 and 16.
- (2) That the owner or lessee has seven working days within which to notify the department in writing that he wishes to contest the secretary's notification or the assessed penalty.

(b) Penalty.—If, within seven working days from the receipt of notification issued by the department, the owner or lessee does not notify the department of his intention to contest the notification or the assessed penalty, the notification and penalty shall become final.

Section 11. Hearings.

(a) Hearing.—Whenever an owner or lessee of an amusement ride or attraction notifies the department in writing that the owner or lessee intends to contest any notice issued pursuant to section 10, the secretary shall grant a hearing within seven days after receipt of notification by the department.

(b) Hearing examiner.—The secretary may appoint a hearing examiner to conduct hearings and make determinations upon any proceeding instituted before the secretary and any motion in connection therewith. The hearing examiner shall prepare an official record with testimony and report his determination in writing.

(c) Report.—The report of the hearing examiner shall become final unless, within seven working days after it is issued, any affected owner or lessee requests, in writing, a review by the secretary of the proceedings before the hearing examiner.

(d) Order.—After a review of the proceedings, the secretary shall, with or without a hearing, issue an order affirming, modifying or vacating the notice or civil penalty or directing other appropriate relief. The secretary's order shall become final 15 days after its issuance.

(e) Abatement.—After an opportunity for hearing as provided in this section, the secretary, upon a showing by an amusement ride or attraction owner or lessee of a good faith effort to comply with the abatement require-

ments, may issue an order affirming or modifying the abatement requirements.

Section 12. Appeals.

Any person adversely affected or aggrieved by any rule, regulation, standard or order of the department issued under this act may appeal to the Commonwealth Court. The commencement of appellate proceedings does not operate as a stay of any rule, regulation, standard or order issued by the department or secretary under the provisions of this act, except that the court, after notice to the department and hearing, may grant a stay conditioned upon the appellant posting security or bond as the court may deem proper.

Section 13. Records and reports.

Anytime an owner or lessee submits an accident report to his insurance company, a copy of those reports which involve physical injuries or death to an individual or individuals as a result of the operation of an amusement ride or attraction shall be sent to the department by the owner or lessee. The notice shall indicate the description of the amusement ride or attraction by which the injury or death occurred and the nature of the injuries or cause of death.

Section 14. Insurance.

(a) Minimum amount.—A person may not operate an amusement ride or attraction unless a policy of insurance has been purchased to insure the owner or operator against liability for injuries to the persons arising out of the use of any amusement ride or attraction within the owner's control. Such insurance shall be in an amount of not less than \$300,000 per occurrence or \$1,000,000 in the aggregate.

(b) Policy.—The insurance policy shall be procured from any insurer or surety that is authorized to do business within the Commonwealth or eligible to do business under section 7 of the act of January 24, 1966 (1965 P.L.1509, No.531), referred to as the Surplus Lines Insurance Law.

(c) Certificate.—A certificate of insurance shall be furnished to the department.

Section 15. Civil penalties.

(a) Violations.—Any person who willfully or repeatedly violates any provision of this act or any rule, regulation, standard or order promulgated pursuant to this act is subject to a civil penalty not to exceed \$2,000 for each violation.

(b) Factors.—Under this act the secretary shall, in assessing penalties, give due consideration to the appropriateness of the penalty with respect to the size of the business of the amusement ride or attraction owner or lessee being charged, the gravity of the violation, the good faith of the owner or lessee and the owner's or lessee's history of previous violations.

Section 16. Criminal penalties.

(a) Violations resulting in death.—Any owner or lessee of an amusement ride or attraction who willfully violates any provision of this act or any rule, regulation, standard or order promulgated pursuant to this act, where the violation causes death to any member of the public exposed to the violation,

commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine not exceeding \$2,500 or to a term of imprisonment not exceeding six months, or both. If the conviction is for a violation committed after a first conviction, the offender shall be sentenced to pay a fine not exceeding \$5,000 or to a term of imprisonment not exceeding one year, or both.

(b) False representations.—A person who knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this act commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine not exceeding \$2,500 or to a term of imprisonment not exceeding six months, or both.

Section 17. Payment of cost of administering act.

The cost of administering this act shall be included in the budget of the department to be paid from the General Fund.

Section 18. Commonwealth not liable.

Neither the Commonwealth nor any political subdivision, directly or indirectly, is the guarantor of the safety of any amusement attraction or amusement ride not owned or operated by the Commonwealth or the political subdivision, and the Commonwealth and its political subdivisions shall have all the attributes of sovereign immunity with regard to the activities of its officials and employees with respect to the inspection of amusement attractions and amusement rides as required under the provisions of this act.

Section 19. Expiration of advisory board.

Section 5 of the act expires December 31, 1987.

Section 20. Effective date.

This act shall take effect January 1, 1985.

APPROVED—The 18th day of June, A. D. 1984.

DICK THORNBURGH