

4470

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1988

— ● —

ENROLLED

Com. Sub. for

HOUSE BILL No. *4470*

(By Mr. *Speaker, Mr. Chambers and*
delegate Swann)
(*By request of the Executive*)

— ● —

Passed *March 11* 1988

In Effect *ninety days from* Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR

H. B. 4470

(By MR. SPEAKER, MR. CHAMBERS, and DELEGATE SWANN)
[By request of the Executive]

[Passed March 11, 1988; in effect ninety days from passage.]

AN ACT to amend chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article ten, relating to creating an amusement rides and amusement attractions safety act; promulgation of rules by labor department for installation, maintenance and operation of amusement rides and amusement attractions; definitions; inspection and permit fees; inspectors; permits; application; annual inspection; issuance of permit for amusement rides and amusement attractions; availability to public of certificate of inspection; filing of notice of intention to erect new ride or attraction; notice of serious physical injury or fatality, investigations; service of process on owners or operators; records available to public; temporary cessation of operation of unsafe rides or attractions; requiring liability insurance, bond or other security; continuing authority of cities and counties to regulate other aspects of carnivals and fairs; criminal penalty; and providing continuing authority of state fire marshal to inspect for fire prevention and control.

Be it enacted by the Legislature of West Virginia:

That chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article ten, to read as follows:

ARTICLE 10. AMUSEMENT RIDES AND AMUSEMENT ATTRACTIONS SAFETY ACT.

§21-10-1. Short title.

1 This article shall be known and may be cited as the
2 "Amusement Rides and Amusement Attractions Safety
3 Act."

§21-10-2. Definitions.

1 As used in this article:

2 (a) "Amusement ride" means a mechanical device
3 which carries or conveys passengers along, around or
4 over a fixed or restricted route or course for the purpose
5 of giving its passengers amusement, pleasure, thrills or
6 excitement. The term includes carnival rides and fair
7 rides of a temporary or portable nature which are
8 assembled and reassembled or rides which are relocated
9 from place to place. "Amusement ride" may not be
10 construed to mean any such mechanical device which is
11 coin operated and does not include the operation of
12 vehicles of husbandry incidental to any agricultural
13 operations or the operation of amusement devices of a
14 permanent nature which are subject to building regu-
15 lations issued by cities or counties and existing appli-
16 cable safety orders;

17 (b) "Amusement attraction" means any building or
18 structure around, over or through which people may
19 move or walk without the aid of any moving device
20 integral to the building or structure that provides
21 amusement, pleasure, thrills or excitement, including
22 those of a temporary or portable nature which are
23 assembled and reassembled or which are relocated from
24 place to place. The term does not include any enterprise
25 principally devoted to the exhibition of products of
26 agriculture, industry, education, science, religion or the
27 arts and shall not be construed to include any concession
28 stand or booth for the selling of food or drink or

29 souvenirs.

§21-10-3. Rules.

1 The department of labor shall promulgate rules for
2 the safe installation, repair, maintenance, use, operation
3 and inspection of all amusement rides and amusement
4 attractions as the department finds necessary for the
5 protection of the general public using amusement rides
6 and amusement attractions. The rules shall be in
7 addition to the existing applicable safety orders and will
8 be concerned with engineering force stresses, safety
9 devices and preventative maintenance. All such rules
10 shall be promulgated in accordance with the provisions
11 of article three, chapter twenty-nine-a of this code.

§21-10-4. Inspection and permit fees.

1 The department shall determine a schedule of inspec-
2 tion and permit fees, which fees shall not annually
3 exceed twenty dollars a ride. All such fees received shall
4 be deposited in the general revenue fund. No fees may
5 be charged public agencies. The department shall issue
6 and the owner and/or operator of the amusement rides
7 and amusement attractions shall visibly display to the
8 public inspection stickers denoting and signifying that
9 the inspection and permit fee authorized by this section
10 has been paid.

§21-10-5. Inspectors.

1 The department may hire or contract with inspectors
2 to inspect amusement rides and amusement attractions.

§21-10-6. Permits; application; annual inspection.

1 No operator or owner may knowingly permit the
2 operation of an amusement ride or amusement attrac-
3 tion without a permit issued by the department except
4 that such amusement ride or amusement attraction may
5 operate without a permit from the date of application
6 until inspection as provided herein, but in no event for
7 a period longer than seven days from the date of first
8 assembly in the state. Each year, before the first time
9 the amusement ride or amusement attraction is as-
10 sembled in this state for public use, an operator or

11 owner shall apply for a permit to the department on a
12 form furnished by the department and containing such
13 information as the department may require. Upon such
14 application and within seven days of the first time said
15 ride or attraction is assembled in this state for public
16 use, all amusement rides and amusement attractions
17 shall be inspected, and thereafter at least once every
18 year. Amusement rides and amusement attractions may
19 also be inspected each time they are disassembled and
20 reassembled and periodically at any reasonable time
21 without prior notice. Following satisfactory inspection,
22 the inspector shall issue a permit.

**§21-10-7. Issuance of permit; certificate of inspection;
availability to public.**

1 If, after inspection, an amusement ride or amusement
2 attraction is found to comply with the rules and
3 regulations of the department, the department shall
4 issue a permit to operate. The permit shall be in the
5 form of a certificate of inspection and shall be kept in
6 the records of any operator or owner for a three year
7 period and shall be readily accessible to the public for
8 inspection at any reasonable time at the carnival or fair
9 where such amusement ride or attraction is located. A
10 copy of such certificate, showing the last date of
11 inspection, shall be affixed to such amusement ride or
12 amusement attraction upon issuance.

**§21-10-8. Notice of intention to erect new ride or attrac-
tion or add to or alter existing ride or
attraction.**

1 Before a new amusement ride or amusement attrac-
2 tion is erected, or whenever any additions or alterations
3 are made which change the structure, mechanism,
4 classification or capacity of any amusement ride or
5 amusement attraction, the operator shall file with the
6 department a notice of his intention and any plans or
7 diagrams requested by the department for purposes of
8 determining the applicability of section six of this
9 article.

**§21-10-9. Notice of serious physical injury or fatality;
investigations; records available to public.**

1 An owner or operator of an amusement ride or
2 amusement attraction shall notify the department not
3 later than twenty-four hours after any fatality or
4 accident occurring as a result of the operation of the
5 amusement ride or amusement attraction that results in
6 a serious physical injury requiring medical treatment or
7 results in a loss of consciousness. The notice may be oral
8 or written. The department shall investigate each such
9 fatality or accident and any safety related complaint
10 involving an amusement ride or amusement attraction
11 in this state about which the department receives notice.
12 Every owner or operator of an amusement ride or
13 amusement attraction shall keep a record of each such
14 accident or fatality and such record shall be kept with
15 the certificate of inspection required by this article and
16 shall be readily accessible to the public for inspection
17 at any reasonable time at the carnival or fair where such
18 amusement ride or amusement attraction is located.

§21-10-10. Service of process.

1 Any person, firm or corporation operating an amuse-
2 ment ride or amusement attraction may be served with
3 civil process in the same manner as if the owner or
4 operator was a domestic or foreign corporation.

§21-10-11. Temporary cessation of operation of ride or attraction determined to be unsafe.

1 The department may order, in writing, a temporary
2 cessation of operation of an amusement ride or amuse-
3 ment attraction if it has been determined after inspec-
4 tion to be hazardous or unsafe. Operation shall not
5 resume until such conditions are corrected to the
6 satisfaction of the department.

§21-10-12. Insurance; bond.

1 No person may operate an amusement ride or amuse-
2 ment attraction unless at the time there is in existence
3 (a) a policy of insurance approved by the department
4 and obtained from an insurer authorized to do business
5 in this state in an amount of not less than three hundred
6 thousand dollars per person and one million dollars in
7 the aggregate for each amusement ride or attraction

8 location insuring the owner or operator against liability
9 for injury suffered by persons riding the amusement
10 ride or by persons in, on, under or near the amusement
11 attraction, or (b) a bond in a like amount, as approved
12 by the department: *Provided*, That the aggregate
13 liability of the surety under any such bond shall not
14 exceed the face amount thereof, or (c) cash or other
15 security acceptable to the department. Satisfactory
16 evidence of such insurance, bond or other security shall
17 accompany the permit application.

**§21-10-13. Regulation of carnivals, fairs and amusement
rides and amusement attractions by cities
and counties.**

1 Nothing contained in this article prevents cities and
2 counties from regulating carnivals, fairs or amusement
3 rides and amusement attractions with regard to any
4 aspect not relating to installation, repair, maintenance,
5 use, operation and inspection of amusement rides and
6 amusement attractions.

§21-10-14. Criminal penalty for violation.

1 Any operator or owner who knowingly permits the
2 operation of an amusement ride or amusement attrac-
3 tion in violation of the provisions of section six of this
4 article is guilty of a misdemeanor, and, upon conviction
5 thereof, shall be fined not more than one thousand
6 dollars, imprisoned in the county jail not more than
7 twelve months, or both fined and imprisoned.

§21-10-15. Continuing authority of state fire marshal.

1 Nothing in this article shall be construed to be in
2 conflict with or to in any way limit the authority of the
3 state fire marshal under the provisions of chapter
4 twenty-nine, article three, pertaining to fire prevention
5 and control.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Bruce O. Williams
Chairman Senate Committee

Bernard V. Kelly
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Isabel C. Smith
Clerk of the Senate

Donald D. Kopp
Clerk of the House of Delegates

Don Tolson
President of the Senate

W. H. C. C.
Speaker of the House of Delegates

The within *approved* this the *30th*
day of *March*, 1988.

Anna. M. M.
Governor

PRESENTED TO THE

GOVERNOR

Date 3/22/88

Time 11:22 a.m.

RECEIVED

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE