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**WEST VIRGINIA CODE CHAPTER 21**  
**ARTICLE 10**

WV Legislature

**§21-10-1. Short title.**

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

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**§21-10-2. Definitions.**

As used in this article:

(a) "Amusement ride" means a mechanical device which carries or conveys passengers along, around or over a fixed or restricted route or course for the purpose of giving its passengers amusement, pleasure, thrills or excitement. The term includes carnival rides and fair rides of a temporary or portable nature which are assembled and reassembled or rides which are relocated from place to place. "Amusement ride" may not be construed to mean any mechanical device which is coin operated and does not include the operation of a ski lift, the operation of tramways at state parks, the operation of vehicles of husbandry incidental to any agricultural operations or the operation of amusement devices of a permanent nature which are subject to building regulations issued by cities or counties and existing applicable safety orders;

(b) "Amusement attraction" means 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, including those of a temporary or portable nature which are assembled and reassembled or which are relocated from place to place. The term does not include any enterprise principally devoted to the exhibition of products of agriculture, industry, education, science, religion or the arts and shall not be construed to include any concession stand or booth for the selling of food or drink or souvenirs;

(c) "Kiddie ride" means an amusement ride or amusement attraction that is expressly designed for or offered to: (1) Children age twelve or less; (2) persons who are forty-two inches in height or less; or (3) persons who are ninety pounds in weight or less;

(d) "Intoxicated" means influenced or affected by the ingestion of alcohol, a controlled substance, any intoxicant or any combination of alcohol, controlled substances and intoxicants;

(e) "Mobile amusement ride or mobile amusement attraction" means an amusement ride or amusement attraction which is erected in a single physical location for a period of less than twelve consecutive months;

(f) "Operator" means the person having direct control of the starting, stopping and speed of an amusement ride or attraction;

(g) "Owner" means any person, corporation, partnership, or association who owns an amusement ride or attraction or, in the event that the amusement ride or attraction is leased, the lessee;

(h) "Stationary amusement ride or stationary amusement attraction" means an amusement ride or amusement attraction that is erected in a single physical location for a period of more

than twelve consecutive months.

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**§21-10-3. Rules.**

The Division of Labor shall propose legislative rules for promulgation for the safe installation, repair, maintenance, use, operation and inspection of all amusement rides and amusement attractions as the division finds necessary for the protection of the general public using amusement rides and amusement attractions. The rules shall be in addition to the existing applicable safety orders and shall be concerned with engineering force stresses, safety devices and preventative maintenance. All such rules shall be promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code.

**§21-10-4. Inspection and permit fees.**

(a) The division shall charge inspection and permit fees. The annual permit fee is \$100 for each ride or attraction. The annual inspection fee, if an inspection is to be done by the division, is \$100 for each ride or attraction. The annual inspection fee, if an inspection is to be done by the division, is due at the time of application for the annual permit. The division shall waive the inspection fee for any ride or attraction whose owner provides proof of nonprofit business status or for any ride or attraction whose owner provides proof that an inspection has been completed within the last year by a certified special inspector as provided in §21-10-6 of this code.

(b) The division may charge additional inspection fees equal to the annual inspection fee for additional inspections required as the result of the condemnation of a device for safety standards violations and for inspections required as a result of accidents involving serious or fatal injury. If any owner or operator requires an inspection as the result of a violation of the permitting requirements of §21-10-6 of this code, the division shall charge the owner or operator \$75 per hour in addition to the established inspection fee, including travel time.

(c) All fees paid pursuant to this article shall be paid to the Commissioner of Labor and deposited in an appropriated special revenue account in the State Treasury known as the Amusement Rides and Amusement Attractions Safety Fund and expended for the implementation and enforcement of this article. Through June 30, 2019, amounts collected which are found from time to time to exceed funds needed for the purposes set forth in this article may be utilized by the commissioner as needed to meet the division's funding obligations: Provided, That beginning July 1, 2019, amounts collected may not be utilized by the commissioner as needed to meet the division's funding obligations.

(d) No inspection fee may be charged public agencies.

(e) The division shall issue, and the owner, operator, or both of the amusement rides and amusement attractions shall visibly display to the public, inspection stickers denoting and signifying that the inspection and permit fee authorized by this section has been paid or waived.

**§21-10-5. Inspectors.**

(a) The Division may hire or contract with inspectors to inspect amusement rides and amusement attractions. The Division is responsible for oversight and review of the activities of special inspectors and may hire or contract with inspectors to review the activities of special inspectors.

(b) The Division shall certify all special inspectors who are employed by insurance providers that write insurance policies for amusement rides and amusement attractions required by section twelve of this article. The Division may suspend or revoke any certification of a special inspector upon a showing of good cause. The Division shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code providing an application process and minimum qualifications for certification of special inspectors. The Division may charge an annual certification fee not to exceed \$50.

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

No operator or owner may knowingly permit the operation of an amusement ride or amusement attraction without a permit issued by the Division. Each year and at least fifteen days before the first time the amusement ride or amusement attraction is made available in this state for public use, an operator or owner shall apply for a permit to the Division on a form furnished by the Division and containing any information the Division may require. The Division shall, within thirty days of the first time in the calendar year the ride or attraction is made available in this state for public use, inspect all amusement rides and amusement attractions. The Division shall inspect all stationary rides and attractions at least once every year. The Division may inspect all mobile amusement rides and amusement attractions each time they are disassembled and reassembled for use in this state. The Division may conduct inspections at any reasonable time without prior notice: Provided, That in lieu of performing its own inspection, the Division may accept inspection reports from special inspectors certified by the Division.

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

If, after inspection, an amusement ride or amusement attraction is found to comply with the rules of the division, the division shall issue a permit to operate. The permit shall be in the form of a certificate of inspection and shall be kept in the records of any operator or owner for a three-year period and shall be readily accessible to the public for inspection at any reasonable time at the carnival, fair or event where the amusement ride or attraction is located. A copy of the certificate, showing the last date of inspection, shall be affixed to the amusement ride or amusement attraction upon issuance: Provided, That the division shall take final action upon all completed permit applications within thirty days of receipt if the application is uncontested, or within ninety days if the application is contested.

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

Before a new amusement ride or amusement attraction is erected, or whenever any additions or alterations are made which change the structure, mechanism, classification or capacity of any amusement ride or amusement attraction, the operator shall file with the division a notice of his or her intention and any plans or diagrams requested by the division for purposes of determining the applicability of section six of this article.

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

An owner or operator of an amusement ride or amusement attraction shall notify the division not later than twenty-four hours after any fatality or accident occurring as a result of the operation of the amusement ride or amusement attraction that results in a serious physical injury to any person requiring medical treatment or results in a loss of consciousness to any person. The notice may be oral or written. The division shall investigate each fatality or accident and any safety-related complaint involving an amusement ride or amusement attraction in this state about which the division receives notice. Every owner or operator of an amusement ride or amusement attraction shall keep a record of each accident or fatality and the record shall be kept with the certificate of inspection required by this article and shall be readily accessible to the public for inspection at any reasonable time at the carnival, fair or event where the amusement ride or amusement attraction is located.

**§21-10-10. Service of process.**

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

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

The division may order, in writing, a temporary cessation of operation of an amusement ride or amusement attraction if it has been determined after inspection to be hazardous or unsafe. Operation of the amusement ride or amusement attraction shall not resume until the conditions are corrected to the satisfaction of the division.

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**§21-10-12. Insurance; bond.**

No person may operate an amusement ride or amusement attraction unless at the time there is in existence: (a) A policy of insurance approved by the division and obtained from an insurer authorized to do business in this state in an amount of not less than \$300,000 per person and \$1 million in the aggregate for each amusement ride or attraction location insuring the owner or operator against liability for injury suffered by persons riding the amusement ride or by persons in, on, under or near the amusement attraction; or (b) a bond in a like amount, as approved by the division: Provided, That the aggregate liability of the surety under any bond shall not exceed the face amount of the bond; or (c) cash or other security acceptable to the division. Satisfactory evidence of the insurance, bond or other security shall accompany the permit application.

**§21-10-12a. Minimum age for operating amusement ride.**

No individual under the age of sixteen may be the operator of a kiddie ride or if under the age of eighteen be an operator of any other amusement ride or attraction: Provided, That the individual is not otherwise prohibited from being an operator pursuant to other state or federal law.

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

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

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

Any operator or owner who knowingly permits the operation of an amusement ride or amusement attraction in violation of the provisions of sections six, seven, eight, nine, eleven, twelve or twelve-a of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than 250 nor more than \$1,000, confined in the county or regional jail not more than twelve months, or both fined and confined. Each day that a violation continues shall be considered a separate violation.

**§21-10-15. Operating or assembling an amusement ride while intoxicated; criminal penalty.**

(a) A person may not operate or assemble an amusement ride or attraction while intoxicated.

(b) A person who violates subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$1,000 and not more than \$2,500, or confined in the county or regional jail for not less than thirty days and not more than one year, or both.

(c) The clerk of the magistrate court or circuit court in which a person is convicted of a violation of this section shall notify the commissioner within ten days of the conviction.

**§21-10-16. Revocation and suspension of permits.**

The commissioner may revoke or temporarily suspend the permit to operate issued pursuant to the provisions of section seven of this article to an owner or employee or contractor of an owner who is convicted of, or enters a guilty plea or a plea of nolo contendere to, a violation of subsection (a), section fifteen of this article.

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**§21-10-17. Civil penalties for violations.**

(a) If an individual is convicted of, or enters a guilty plea or a plea of nolo contendere to, a violation of subsection (a), section fifteen of this article, and the individual was not the owner of the ride being operated or assembled, the commissioner may impose a civil penalty not to exceed \$5,000 on the owner of the ride being operated or assembled: Provided, That the owner knew or should have known that the individual was acting in violation of subsection (a), section fifteen of this article.

(b) All civil penalties collected by the commissioner shall be deposited into the amusement rides and amusement attractions safety fund created in section four of this article.

**§21-10-18. Continuing authority of State Fire Marshal.**

Nothing in this article shall be construed to be in conflict with or to in any way limit the authority of the State Fire Marshal under the provisions of article three, chapter twenty-nine of this code pertaining to fire prevention and control.

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**§21-10-19. Patron responsibility.**

The owner or operator of an amusement ride or attraction may refuse any member of the public admission to a ride if his or her bearing or conduct could endanger himself or herself or others. These reasons include, but are not limited to: (1) Intoxication; (2) refusal to obey posted rules; (3) unacceptable or unsafe behavior as determined by the operator of the ride; and (4) violation of any age, height or weight restrictions as posted.

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