WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1988

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ENROLLED

Cam. Sub. for

HOUSE BILL No. 4410

(By Mr. Speaker, Mr. Chamberlain)
DelegateJefferson
(By request of the Executive)

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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.

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

§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 such mechanical device which is coin operated and does not include 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
§21-10-3. Rules.

The department of labor shall promulgate rules for the safe installation, repair, maintenance, use, operation and inspection of all amusement rides and amusement attractions as the department 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 will 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.

The department shall determine a schedule of inspection and permit fees, which fees shall not annually exceed twenty dollars a ride. All such fees received shall be deposited in the general revenue fund. No fees may be charged public agencies. The department shall issue and the owner and/or operator 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.

§21-10-5. Inspectors.

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

§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 department except that such amusement ride or amusement attraction may operate without a permit from the date of application until inspection as provided herein, but in no event for a period longer than seven days from the date of first assembly in the state. Each year, before the first time the amusement ride or amusement attraction is assembled in this state for public use, an operator or
owner shall apply for a permit to the department on a form furnished by the department and containing such information as the department may require. Upon such application and within seven days of the first time said ride or attraction is assembled in this state for public use, all amusement rides and amusement attractions shall be inspected, and thereafter at least once every year. Amusement rides and amusement attractions may also be inspected each time they are disassembled and reassembled and periodically at any reasonable time without prior notice. Following satisfactory inspection, the inspector shall issue a permit.

§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 and regulations of the department, the department 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 or fair where such amusement ride or attraction is located. A copy of such certificate, showing the last date of inspection, shall be affixed to such amusement ride or amusement attraction upon issuance.

§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 department a notice of his intention and any plans or diagrams requested by the department 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 department 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 requiring medical treatment or results in a loss of consciousness. The notice may be oral or written. The department shall investigate each such fatality or accident and any safety related complaint involving an amusement ride or amusement attraction in this state about which the department receives notice. Every owner or operator of an amusement ride or amusement attraction shall keep a record of each such accident or fatality and such 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 or fair where such 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.

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

The department 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 shall not resume until such conditions are corrected to the satisfaction of the department.

§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 department and obtained from an insurer authorized to do business in this state in an amount of not less than three hundred thousand dollars per person and one million dollars 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 department: Provided, That the aggregate liability of the surety under any such bond shall not exceed the face amount thereof, or (c) cash or other security acceptable to the department. Satisfactory evidence of such insurance, bond or other security shall accompany the permit application.

§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.


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


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 chapter twenty-nine, article three, pertaining to fire prevention and control.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Bruce O. Allision  
Chairman Senate Committee

Bernard V. Kelly  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Todd C. Stith  
Clerk of the Senate

Donald D. Kapp  
Clerk of the House of Delegates

Don Thomas  
President of the Senate

Mike C. Miller  
Speaker of the House of Delegates

The within __________________________ this the 30th day of __________________________, 1988.

Able Buage  
Governor