

SB 166

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SENATE OF WEST VIRGINIA

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1999



## ENROLLED

*COMMITTEE SUBSTITUTE FOR*

SENATE BILL NO. 166

(By Senators TUMBLIN, MR. PRESIDENT, AND Sprade,  
By Request of the EXECUTIVE)



PASSED March 9, 1999

In Effect July 1, 1999 **Passage**

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COMMITTEE SUBSTITUTE

FOR

## Senate Bill No. 166

(SENATORS TOMBLIN, MR. PRESIDENT, AND SPROUSE,  
BY REQUEST OF THE EXECUTIVE, *original sponsors*)

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[Passed March 9, 1999; to take effect July 1, 1999.]

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AN ACT to amend and reenact sections two, three, four, five, six, seven, eight, nine, eleven, twelve and fourteen, article ten, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to amusement rides and amusement attractions safety; inspection thereof; defining terms; providing for inspections and fees; waiver of inspection fees for nonprofit business; authorizing the division of labor to charge additional costs for additional inspections and inspections required as a result of violations of permitting requirements; creating a special revenue account; requiring moneys in special revenue account to be appropriated by the Legislature; authorizing the use of fees collected to be used for enforcement of the

article; requiring a permit before operation of an amusement ride or amusement attraction; making technical corrections; and providing criminal penalties.

*Be it enacted by the Legislature of West Virginia:*

That sections two, three, four, five, six, seven, eight, nine, eleven, twelve and fourteen, article ten, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 10. AMUSEMENT RIDES AND AMUSEMENT ATTRACTIONS SAFETY ACT.**

**§21-10-2. Definitions.**

1 As used in this article:

2 (a) "Amusement ride" means a mechanical device which  
3 carries or conveys passengers along, around or over a fixed  
4 or restricted route or course for the purpose of giving its  
5 passengers amusement, pleasure, thrills or excitement.

6 The term includes carnival rides and fair rides of a tempo-  
7 rary or portable nature which are assembled and reassem-  
8 bled or rides which are relocated from place to place.

9 "Amusement ride" may not be construed to mean any  
10 mechanical device which is coin operated and does not  
11 include the operation of a ski lift, the operation of  
12 tramways at state parks, the operation of vehicles of  
13 husbandry incidental to any agricultural operations or the  
14 operation of amusement devices of a permanent nature  
15 which are subject to building regulations issued by cities  
16 or counties and existing applicable safety orders;

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

27 not be construed to include any concession stand or booth  
28 for the selling of food or drink or souvenirs;

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

33 (d) "Stationary amusement ride or stationary amusement  
34 attraction" means an amusement ride or amusement  
35 attraction which is erected in a single physical location for  
36 a period of more than twelve consecutive months.

### **§21-10-3. Rules.**

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

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

1 (a) The division shall charge inspection and permit fees.  
2 The annual permit fee is twenty-five dollars for each ride  
3 or attraction. The annual inspection fee is one hundred  
4 dollars for each ride or attraction. The annual inspection  
5 fee is due at the time of application for the annual permit.  
6 The division shall waive the inspection fee for any ride or  
7 attraction whose owner provides proof of nonprofit  
8 business status.

9 (b) The division may charge additional inspection fees  
10 equal to the annual inspection fee for additional inspec-  
11 tions required as the result of the condemnation of a  
12 device for safety standards violations and for inspections  
13 required as a result of accidents involving serious or fatal  
14 injury. If any owner or operator requires an inspection as  
15 the result of a violation of the permitting requirements of

16 section six of this article, the division shall charge the  
17 owner or operator seventy-five dollars per hour in addition  
18 to the established inspection fee, including travel time.

19 (c) All fees received shall be deposited in a special  
20 revenue account in the state treasury known as the  
21 "Amusement Rides and Amusement Attractions Safety  
22 Fund." The division may use moneys from the fund for the  
23 purpose of enforcement of the provisions of this article.  
24 Expenditures are not authorized from collections, but are  
25 to be made only in accordance with appropriation by the  
26 Legislature and in accordance with the provisions of  
27 article three, chapter twelve of this code and upon fulfill-  
28 ment of the provisions of article two, chapter five-a of this  
29 code.

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

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

**§21-10-5. Inspectors.**

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

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

1 No operator or owner may knowingly permit the opera-  
2 tion of an amusement ride or amusement attraction  
3 without a permit issued by the division. Each year and at  
4 least fifteen days before the first time the amusement ride  
5 or amusement attraction is made available in this state for  
6 public use, an operator or owner shall apply for a permit  
7 to the division on a form furnished by the division and  
8 containing any information the division may require. The  
9 division shall, upon application and within ten days of the  
10 first time the ride or attraction is made available in this  
11 state for public use, inspect all amusement rides and  
12 amusement attractions. The division shall inspect all  
13 stationary rides and attractions at least once every year.  
14 The division may inspect all mobile amusement rides and

15 amusement attractions each time they are disassembled  
16 and reassembled for use in this state. The division may  
17 conduct inspections at any reasonable time without prior  
18 notice.

**§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 of the division,  
3 the division shall issue a permit to operate. The permit  
4 shall be in the form of a certificate of inspection and shall  
5 be kept in the records of any operator or owner for a three-  
6 year period and shall be readily accessible to the public for  
7 inspection at any reasonable time at the carnival, fair or  
8 event where the amusement ride or attraction is located.  
9 A copy of the certificate, showing the last date of inspec-  
10 tion, shall be affixed to the amusement ride or amusement  
11 attraction upon issuance.

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

1 Before a new amusement ride or amusement attraction  
2 is erected, or whenever any additions or alterations are  
3 made which change the structure, mechanism, classifica-  
4 tion or capacity of any amusement ride or amusement  
5 attraction, the operator shall file with the division a notice  
6 of his or her intention and any plans or diagrams re-  
7 quested by the division for purposes of determining the  
8 applicability of section six of this 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 amuse-  
2 ment attraction shall notify the division not later than  
3 twenty-four hours after any fatality or accident occurring  
4 as a result of the operation of the amusement ride or  
5 amusement attraction that results in a serious physical  
6 injury to any person requiring medical treatment or results  
7 in a loss of consciousness to any person. The notice may be  
8 oral or written. The division shall investigate each fatality  
9 or accident and any safety-related complaint involving an

10 amusement ride or amusement attraction in this state  
11 about which the division receives notice. Every owner or  
12 operator of an amusement ride or amusement attraction  
13 shall keep a record of each accident or fatality and the  
14 record shall be kept with the certificate of inspection  
15 required by this article and shall be readily accessible to  
16 the public for inspection at any reasonable time at the  
17 carnival, fair or event where the amusement ride or  
18 amusement attraction is located.

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

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

**§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: (a)  
3 A policy of insurance approved by the division and  
4 obtained from an insurer authorized to do business in this  
5 state in an amount of not less than three hundred thousand  
6 dollars per person and one million dollars in the aggregate  
7 for each amusement ride or attraction location insuring  
8 the owner or operator against liability for injury suffered  
9 by persons riding the amusement ride or by persons in, on,  
10 under or near the amusement attraction; or (b) a bond in  
11 a like amount, as approved by the division: *Provided,*  
12 That the aggregate liability of the surety under any bond  
13 shall not exceed the face amount of the bond; or (c) cash or  
14 other security acceptable to the division. Satisfactory  
15 evidence of the insurance, bond or other security shall  
16 accompany the permit application.

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

1 Any operator or owner who knowingly permits the  
2 operation of an amusement ride or amusement attraction  
3 in violation of the provisions of this article is guilty of a

4 misdemeanor and, upon conviction thereof, shall be fined  
5 not less than two hundred fifty dollars nor more than one  
6 thousand dollars, imprisoned in the county jail not more  
7 than twelve months, or both fined and imprisoned. Each  
8 day that a violation continues shall be considered a  
9 separate violation.

*[Faint handwritten signature]*



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

  
.....  
Chairman Senate Committee

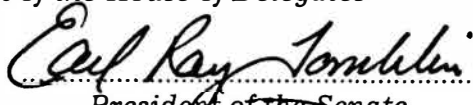
  
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Chairman House Committee

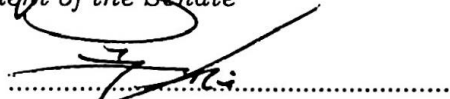
Originating in the Senate.

In effect July 1, 1999.

  
.....  
Clerk of the Senate

  
.....  
Clerk of the House of Delegates

  
.....  
President of the Senate

  
.....  
Speaker House of Delegates

The within..... *approved* ..... this the *30th*  
Day of..... *March* ....., 1999

  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/25/99

Time 1:44 pm