

CARNIVAL AND AMUSEMENT RIDES

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House Bill 4527 (proposed substitute H-1)

Sponsor: Rep. Thomas A. Albert

Committee: Regulatory Reform

Complete to 6-17-21

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 4527 would make numerous changes to the Carnival-Amusement Safety Act, including providing new definitions; allowing a permit to operate a ride to be denied, suspended, or revoked; establishing an administrative fine for certain violations of the act; requiring, as a condition to receiving a permit, the retention of training records of employees and provision to the Department of Licensing and Regulatory Affairs (LARA) of any operating instructions a ride's owner possesses for that ride; and requiring a fatality or serious injury to be reported to LARA and allowing LARA to conduct an investigation into the incident.

"Operator" and "owner"

Currently under the act, **operator** and **owner** have the same definition. Either term means a person who owns or controls or has the duty to control the operation of a carnival or amusement ride and includes the state or any political subdivision of the state. Under the bill, **operator** would mean a person who controls the operation of a carnival or amusement ride. **Owner** would mean any person who owns or leases and controls or manages the operation of a carnival or amusement ride and include an individual, partnership, profit or nonprofit corporation, or the state and any of its political subdivisions and their departments or agencies.

Training requirements

The act requires an individual to have received training in specified topics before he or she can be allowed to operate a carnival or amusement ride, including general and ride-specific safety procedures that he or she must follow if there is an unusual condition, interruption of operation, injury, emergency, or evacuation. The bill would add that this training must include the procedures laid out in the owner's emergency response plan required by the bill (described below).

Permit requirements

The act currently requires LARA to issue a permit to operate a carnival or amusement ride if, upon inspection, the ride is found to be in compliance with departmental rules.

The bill would instead require LARA to issue a permit to operate a carnival or amusement ride if, after inspection, all of the following apply:

- The ride and its owner are found to be in compliance with the act and departmental rules, as determined by the inspection.
- The owner has on site a copy of the manufacturer's operating instructions for the ride.
- The owner has on site a copy of the record of training of each employee authorized to operate, assemble, disassemble, or perform maintenance on the ride.
- The owner has on site a copy of the emergency response plan required by the bill.

Inspection after addition or alteration

Under the act, before a new carnival or amusement ride is erected, or whenever additions or alterations are made that change the structure, mechanism, classification, or capacity of a ride, the owner must file with LARA a notice of his or her intention and any plans or diagrams requested by LARA.

The bill would additionally provide that, after an addition or alteration is made as described above, the owner must request an inspection from LARA. The ride could not be operated until it had been inspected.

Permit sanctions

Currently, the director of LARA may order a temporary cessation of operations of a carnival-amusement ride when inspection of the ride has been impeded, obstructed, or interfered with. The order remains in effect until an inspection is made and the ride is found safe for use.

The bill would instead provide that LARA could suspend a permit issued under the act for any of the following reasons:

- The ride is determined, upon inspection, to be hazardous or unsafe.
- An inspection of the ride has been impeded, obstructed, or interfered with.
- An owner fails to submit a completed application or pay the required fee within 30 calendar days of March 1.
- An owner fails to report an accident or suspend operation of a ride as required under the bill.
- An owner fails to request an inspection after making an addition or alteration to a ride that necessitates an inspection (described above).

An owner would be prohibited from operating a carnival or amusement ride without a permit or while a permit is suspended or revoked. At the request of the director of LARA, the attorney general could bring an action seeking a civil fine against the owner for a violation of this prohibition. The owner could be ordered to pay a civil fine of \$2,500 for each day the owner operates a ride in violation of this prohibition, which would be paid to the general fund and credited to LARA for performance of its duties under the act.

A reinspection would have to take place before a suspended permit could be reinstated. The owner could request a reinspection, and it would have to take place not more than 10 days after the request. LARA would have to give the owner advance notice of the reinspection.

If LARA finds that the carnival or amusement ride remains noncompliant after three reinspections during a suspension period, LARA could revoke the permit for the ride. If a permit is revoked, the owner could not apply for another permit or inspection certificate for that ride until March 1 of the year following the year in which the revocation was ordered. If judicial review is sought and a stay of the revocation is obtained, the owner could not apply for another permit or inspection certificate until March 1 of the year following the year in which the final order of the court sustaining the revocation was entered.

In addition to the above, and notwithstanding the existence of any other adequate remedy at law, LARA could bring an action to enjoin the violation of any provision of the act or departmental rule in the circuit court in the county in which the violation occurred or is about

to occur. Upon LARA's presentation to the court of competent and substantial evidence of the violation or threatened violation, the court would have to immediately issue, without bond, the temporary or permanent injunction sought by LARA.

Before the attorney general brings an action as described above or before LARA seeks any remedies or penalties for a violation of the act or departmental rules, LARA could issue a letter of warning to the owner of the ride specifying the violation and directing the owner to immediately correct it.

Documentation and emergency response plan

Upon request, an owner would have to provide to LARA, at no cost to LARA, a copy of the manufacturer's operating instructions for a ride he or she owns and any written bulletins concerning the safety, operation, or maintenance of the ride.

The owner of a ride would have to maintain, on a LARA-prescribed form, a record of training for each employee authorized to operate, assemble, disassemble, or conduct maintenance on a ride. An owner could request approval to use an alternative form that includes at least the information required on the LARA-prescribed form. The record of training would have to be accessible by the owner and made available to LARA on request. A person that falsifies a required record of training would be guilty of a misdemeanor and would have to be fined at least \$1,000, but not more than \$2,500, and could also be imprisoned for up to 90 days.

The owner of a ride also would have to establish an emergency response plan for a carnival or amusement ride. The emergency response plan would have to be accessible to the owner and made available to LARA on request. The emergency response plan would have to include information on at least all of the following:

- Ride-specific safety hazards that need to be identified to mitigate risk.
- Emergency equipment that is on hand.
- When to administer first aid.
- When to contact law enforcement and emergency services.
- When to suspend operation of the carnival or amusement ride.
- What to do if a ***serious injury*** or fatality occurs.

Serious injury would mean a physical injury that is not necessarily permanent, but that constitutes serious bodily disfigurement or seriously impairs the functioning of a body organ or limb. The term includes, but is not limited to, one or more of the following:

- Loss of a limb or use of a limb.
- Loss of a hand, foot, finger, or thumb or use of any of these.
- Loss of an eye or ear or the use of an eye or ear.
- Loss or substantial impairment of a bodily function.
- Serious visible disfigurement.
- A comatose state lasting more than three days.
- Measurable brain damage or mental impairment.
- Skull fracture or other serious bone fracture.
- Subdural hemorrhage or hematoma.

Injury to patrons

Currently, a rider or, if a minor, his or her parent or guardian must report in writing to the operator or an employee or agent of an operator any injury sustained on a carnival or amusement ride before leaving the operator's premises. The act lists the information that must be included on a form provided by the operator or employee or agent. If due to the severity of the injuries the report could not be filed before leaving the premises, it can be filed as soon as reasonably possible. Further, failing to report the injury under this provision does not affect the rider's right to bring a civil action related to the incident.

The bill would eliminate the above provisions and instead require an owner or operator of a ride to immediately report to LARA by telephone any accident in which a fatality occurs or an individual suffers a ***serious injury*** that resulted from the structural or mechanical failure of a ride, or in which it appears that the construction, design, or function of the ride could have directly contributed to the fatality or serious injury. If the accident occurs on a day that LARA is closed, the owner would have to report the incident to LARA by 9 a.m. of the next business day LARA is open. The owner would have to immediately remove the ride from service, secure the scene of the accident, and not disturb the scene to any extent more than is necessary to remove a deceased or injured individual. The ride could not be released for repair or operation until after an inspection of the ride is completed and the ride is determined not to be hazardous or unsafe.

Repealer

The bill would repeal section 13 of the act, which deals with hazardous or unsafe rides.

The bill would take effect September 30, 2022.

MCL 408.652 et seq.

FISCAL IMPACT:

A fiscal analysis is in progress.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.