

Legislative Analysis



CARNIVAL AND AMUSEMENT RIDES

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House Bill 4527 (H-1) as reported from committee

Sponsor: Rep. Thomas A. Albert

1st Committee: Regulatory Reform

2nd Committee: Rules and Competitiveness

Complete to 6-23-21

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

(Enacted as Public Act 97 of 2022)

SUMMARY:

House Bill 4527 would make several changes to the Carnival-Amusement Safety Act, including providing new definitions; allowing a permit to operate a ride to be suspended or revoked; requiring a ride for which a permit was suspended to be reinspected; requiring establishment and retention of an emergency response plan and retention of employee training records; establishing a civil fine for operating a ride without a permit; establishing a criminal penalty for falsifying training records; and requiring a fatality or serious injury to be reported immediately and for the ride to be removed from service pending an inspection and determination that the ride is not hazardous or unsafe.

“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 includes 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.

BRIEF DISCUSSION:

Michigan has one of the oldest amusement/carnival ride programs in the nation, with the first inspection of a ride occurring in 1967. The rides that fall under the Carnival-Amusement Safety Act include the typical amusement park rides, such as roller coasters and Ferris wheels, but also include water slides and go-karts. The act does not regulate bounce houses, bungee jumps, or climbing walls. Currently, inspections of the rides are conducted by certified ride inspectors within LARA's Bureau of Construction Codes, with rides inspected both at fixed locations and traveling shows. Approximately 50 to 100 million rides are taken in the state each year, yet only about 200 injuries were reported to LARA over a 10-year period from about 2007 to 2017. Most of the accidents were attributed to actions by the riders, with children under 13 years of age accounting for one-third of the injuries.

Despite a strong safety record, serious accidents can and do occur. One such accident that occurred in 2015, a go-kart incident that caused an injury that eventually led to the injured person's death earlier this year, highlighted the need for increased training related to emergency responses. Without appropriate emergency standards and protocols in place, and without employees being trained in those standards and protocols, an employee may not have the knowledge needed to provide a quick and appropriate response to an urgent or serious injury. For example, does an employee of a traveling show know the address of the location if a call to 9-1-1 is needed? Does each ride operator have a phone or the ability to summon emergency help? What types of injuries should be reported to LARA and how soon would that injury be reported? When should operation of a ride be suspended and when could it be safely returned to operation?

House Bill 4527 would address many of these concerns. It would increase accountability on the part of ride owners regarding employee training standards and recordkeeping. An owner could face civil fines for operating without a permit and criminal fines for falsifying employee training records. Clear protocols for what to do in an emergency, and how and when to report an injury, would be established. The bill represents input from industry members, LARA, and concerned citizens. Adoption of the bill should further strengthen Michigan's role as a leader in amusement-carnival ride safety.

However, as the bill could increase costs to LARA for increased regulatory responsibilities, it has brought to light that the current fees for permits do not cover current regulatory requirements. The fees have not been adjusted since the late 1960s. House Bill 4527 focuses on safety issues and would not amend the fee structure. However, although industry members support the bill, there is a concern that the bill could trigger a move to adopt a fee increase. And, although not opposed to a fee increase, whether added to this bill or introduced in a different one, industry members have raised a concern that too great of a fee adjustment all at once could be burdensome in light of the economic impact of the pandemic on the industry as a whole. Considering that the industry was shut down from approximately October 2019 (the typical end of the season) until recently, too steep a permit increase could be difficult for ride owners, many of which did not qualify for aid available to other types of business owners. Should a fee adjustment be considered at this time, industry members have suggested a gradual approach, where fees could be adjusted over a period of time as the pandemic wanes and amusement-carnival ride owners experience a level of economic recovery and stability.

FISCAL IMPACT:

LARA

House Bill 4527 would have an indeterminate net fiscal impact on state government. The bill would likely require additional expenditures by LARA. LARA indicated that, under the bill, department staff will need to create forms, verify new information, sanction licensees for violating new requirements, and perform a larger number of inspections. The magnitude of these expenditures is presently indeterminate. The bill would also likely result in additional revenue to the general fund (which is to be credited to LARA) from the \$2,500 civil fine established under the bill for each day that a carnival or amusement ride is operated without a permit or while a permit is suspended or revoked. The magnitude of this revenue is indeterminate and would depend on the volume of violations.

It should also be noted that the Ski and Amusement Division within LARA has been operating in a deficit in recent fiscal years. The department indicated that, on average, fees collected under the Ski Area Safety Act and the Carnival-Amusement Safety Act generate approximately \$80,000 per year, while the annual cost of regulating the industries regularly exceeds \$550,000.

Corrections

House Bill 4527 would have an indeterminate fiscal impact on the state and on local units of government. Under provisions of the bill, for each day an owner operates a carnival or amusement ride without a permit or while a permit is suspended or revoked, the owner may be ordered to pay a civil fine of \$2,500. The bill would require civil fine revenue collected to be paid to the state general fund and credited to the department for performance of its duties. The amount of civil fine revenue that would be collected under the bill is not known.

A person that falsifies a record of training would be guilty of a misdemeanor and could be imprisoned for not more than 90 days and fined not less than \$1,000 or more than \$2,500. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. Costs of local incarceration in county jails and local misdemeanor probation supervision, and how those costs are financed, vary by jurisdiction. The fiscal impact on local court systems would depend on how provisions of the bill affected caseloads and related administrative costs. Any increase in penal fine revenue would increase funding for public and county law libraries, which are the constitutionally designated recipients of those revenues.

POSITIONS:

Representatives of the following entities testified in support of the bill:

- Michigan Association of Fairs and Exhibitions (6-17-21)
- T.J. Schmidt Carnival (4-20-21)

The Department of Licensing and Regulatory Affairs indicated opposition to the bill. (4-27-21)

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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.