

1 HOUSE BILL 493

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO TRADE PRACTICES; PROVIDING FOR INCREASED OVERSIGHT
12 OVER AMUSEMENT RIDES AND DEVICES TO SAFEGUARD AGAINST PERSONAL
13 INJURIES AND PROPERTY DAMAGE; REPEALING A SECTION OF THE NMSA
14 1978 EXEMPTING NONPROFIT ORGANIZATIONS FROM COMPLIANCE WITH
15 AMUSEMENT RIDE AND DEVICE CERTIFICATION REQUIREMENTS; PROVIDING
16 PENALTIES; MAKING TECHNICAL AND CONFORMING CHANGES.

17
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

19 SECTION 1. Section 57-25-1 NMSA 1978 (being Laws 1993,
20 Chapter 284, Section 1) is amended to read:

21 "57-25-1. SHORT TITLE.--~~[This act]~~ Chapter 57, Article 25
22 NMSA 1978 may be cited as the "~~[Carnival]~~ Amusement Ride
23 ~~[Insurance]~~ and Device Safety Act"."

24 SECTION 2. A new section of the Amusement Ride and Device
25 Safety Act is enacted to read:

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1 "[NEW MATERIAL] PURPOSE.--The purpose of the Amusement
2 Ride and Device Safety Act is to guard against personal
3 injuries or property damage during the assembly, disassembly
4 and use of amusement rides or devices and to certify that
5 amusement rides or devices are designed, constructed, assembled
6 or disassembled, maintained, operated and inspected to avoid
7 injuries or property damage."

8 SECTION 3. Section 57-25-2 NMSA 1978 (being Laws 1993,
9 Chapter 284, Section 2, as amended) is amended to read:

10 "57-25-2. DEFINITIONS.--As used in the [~~Carnival~~]
11 Amusement Ride [~~Insurance~~] and Device Safety Act:

12 A. "~~[carnival]~~ amusement ride or device" means
13 [~~any~~]:

14 (1) a mechanical device, aquatic device or
15 combination of devices, including a vehicle or boat, that
16 carries or conveys passengers on, along, around, through or
17 over a fixed or restricted route or course or within a defined
18 area for the purpose of giving its passengers amusement,
19 pleasure, thrills or excitement; including ziplines, bungee
20 jumping facilities and state fair rides, but does not include
21 playground equipment, a single-passenger, coin-operated device
22 secured by a stationary foundation or a small promotional event
23 or operation consisting of fewer than six kiddie rides designed
24 for children twelve years of age or younger, including merry-
25 go-rounds;

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1 (2) a mechanical or manual piece of equipment
2 made for a specific purpose, that when used or operated for its
3 specific purpose allows a person to participate in an activity
4 for thrill, pleasure, climbing, suspension or a similar
5 activity and that, without the use or operation of the
6 equipment, the person could not typically participate in the
7 activity;

8 (3) a building, structure or part of a
9 structure, including a rock climbing face, wall or facility,
10 used for the purpose of providing its users with amusement,
11 pleasure, thrill or excitement or facilitating climbing,
12 suspension or a similar activity, and includes electrical or
13 mechanical equipment if such equipment is an integral part of
14 the structure; or

15 (4) a ride or device designed for individuals
16 to use to bounce, climb, slide or interactively play upon that
17 is made of flexible fabric or material, is kept inflated while
18 in use and relies upon air pressure to maintain its inflation;

19 B. "approved inspector" means an individual who is
20 registered with the department to inspect amusement rides or
21 devices;

22 C. "bungee jumping" means an activity in which an
23 individual falls or jumps from a height above the ground, in
24 which, prior to the fall or jump, the individual is attached to
25 an activity device, such as a cord, that prevents the

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1 individual from hitting the ground, water or other solid, semi-
2 solid, liquid or elastic surface;

3 D. "certification" means the department's approval
4 of the operation of an amusement ride or device;

5 [~~B.~~] E. "department" means the regulation and
6 licensing department;

7 [~~G.~~] F. "inspection" means a physical examination
8 of [~~a carnival ride~~] an amusement ride or device by an approved
9 inspector [~~of the regulation and licensing department~~] prior to
10 [~~issuing~~] the issuance of a certificate of inspection
11 [~~including~~] or certificate of reinspection;

12 G. "local entity" means a private or public person
13 that has legal control of the property on which an amusement
14 ride or device is operated, including the state fair
15 commission, a municipal park commission or a private landowner;

16 [~~D.~~] H. "operator" means a person actually engaged
17 in or directly controlling the operation of [~~a carnival~~] an
18 amusement ride or device; and

19 [~~E.~~] I. "owner" means a person, including the state
20 or any political subdivision of the state, [~~who~~] that owns or
21 leases [~~a carnival ride~~] an amusement ride or device for use in
22 an enterprise or at an event, whether or not a fee is paid for
23 such use."

24 SECTION 4. Section 57-25-3 NMSA 1978 (being Laws 1993,
25 Chapter 284, Section 3, as amended) is amended to read:

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1 "57-25-3. CERTIFICATION REQUIRED--LIABILITY INSURANCE
2 REQUIRED--CERTIFICATE OF INSPECTION REQUIRED--~~[CARNIVAL RIDE~~
3 ~~INSURANCE FUND CREATED]~~ APPROVED INSPECTOR REQUIREMENTS.--

4 A. No person, owner or operator of an amusement
5 ride or device shall operate the amusement ride or device
6 without first obtaining certification from the department.
7 Certification shall be based upon submissions to the department
8 of a properly completed application, proof of insurance, a
9 certificate of inspection and payment of the certification fee.
10 For each amusement ride or device certified by the department,
11 the department shall issue a certification sticker that shall
12 be displayed on the amusement ride or device.

13 B. No person shall operate ~~[a carnival]~~ an
14 amusement ride or device without a policy of insurance in an
15 amount not less than three million dollars (\$3,000,000) in the
16 aggregate against liability for injury to persons or damage to
17 property arising out of the operation of the ~~[carnival]~~
18 amusement ride or device. The policy shall be procured from an
19 insurer licensed to transact business in this state as verified
20 by the office of superintendent of insurance.

21 ~~[B. Either]~~ C. A copy of the policy furnished to
22 the insured or a certificate stating that the insurance
23 required by this section is in effect shall be filed with the
24 department and ~~[a]~~ the local ~~[government]~~ entity.

25 ~~[G.]~~ D. The policy shall contain a schedule listing

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1 by name, year, make, model and serial number each [~~carnival~~]
2 amusement ride or device insured by the policy. In the event
3 of additions or deletions of [~~carnival~~] amusement rides or
4 devices during the policy terms, such changes shall be shown on
5 a change endorsement, a copy of which shall be submitted to the
6 department and the local [~~government~~] entity. The policy shall
7 list the department as the certificate holder.

8 [~~D.~~] E. In the event of policy cancellation by
9 either the insured owner or operator or the insurance company,
10 the insured shall furnish notice of the cancellation to the
11 department and the local [~~government~~] entity not later than ten
12 days prior to cancellation. Cancellation of an insurance
13 policy shall immediately suspend an amusement ride or device's
14 certification and operation of the amusement ride or device
15 shall cease until certification is reinstated by compliance
16 with the requirements of the Amusement Ride and Device Safety
17 Act.

18 [~~E. No person, owner or operator of a carnival ride~~
19 ~~shall operate any carnival ride without obtaining]~~

20 F. A certificate of inspection shall be obtained
21 for each amusement ride [by] or device from an approved
22 inspector [~~of the department or its designee and filing the~~
23 ~~certificate of inspection]~~ and shall be filed with the
24 department and the local [~~government~~] entity. The inspection
25 shall be consistent with the current American society for

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1 testing materials international standards and the national
2 electrical code article 525 standards. The owner or operator
3 shall annually have each [~~carnival~~] amusement ride or device
4 inspected and annually file the certificate of inspection. The
5 certificate of inspection shall state that the [~~carnival~~]
6 amusement ride or device operator or owner has had the [~~rides~~]
7 amusement ride or device independently inspected by [~~a national~~
8 ~~amusement ride safety official class 1, 2 or 3~~] an approved
9 inspector within twelve months of the operation of the
10 amusement ride or device within the state and whether any
11 deficiencies noted by the [~~engineer~~] approved inspector have
12 been corrected. [~~In addition~~]

13 G. The owner or operator of the amusement ride or
14 device shall inspect the ride or device each day the ride or
15 device is [~~operated~~] in operation before any member of the
16 public is permitted [~~to board~~] access to the ride or device.
17 The owner or operator shall keep a current log of such
18 inspections, which shall be available for review by state or
19 local enforcement officials during operating hours.

20 H. The department may require reasonable
21 supplemental inspections in addition to any required
22 inspections to ensure the continued safety of an amusement ride
23 or device, including a requirement to have an inspector on the
24 premises for the duration of an event using the amusement ride
25 or device.

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1 ~~[F.]~~ I. The insured shall pay to the department a
2 ~~[fifty dollar (\$50.00) per carnival ride per inspection filing~~
3 ~~fee with the department.]~~

4 ~~G.~~ The ~~"carnival ride insurance fund"~~ is created in
5 ~~the state treasury. The fund shall consist of all filing fees~~
6 ~~received by the department pursuant to the Carnival Ride~~
7 ~~Insurance Act. Money in the carnival ride insurance fund is~~
8 ~~appropriated to the department for the purpose of carrying out~~
9 ~~the provisions of the Carnival Ride Insurance Act. The fund~~
10 ~~shall not be expended for any purpose other than carrying out~~
11 ~~the provisions of the Carnival Ride Insurance Act.]~~ sixty-five-
12 dollar (\$65.00) filing fee per amusement ride or device.

13 J. A person holding one or more level I, level II
14 or level III amusement ride and device inspector certifications
15 issued by the national association of amusement ride safety
16 officials shall register with the department to become an
17 approved inspector by submitting proof of certification to the
18 department on a form approved by the department along with a
19 thirty-five-dollar (\$35.00) filing fee. The department shall
20 issue a certificate of registration to an approved inspector."

21 SECTION 5. Section 57-25-4 NMSA 1978 (being Laws 1993,
22 Chapter 284, Section 4) is amended to read:

23 "57-25-4. PENALTY.--

24 A. The department or its authorized representative
25 may issue a written order for the immediate, temporary

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1 cessation of operation of [~~a carnival~~] an amusement ride or
2 device if it has been determined that the owner or operator has
3 not acquired or maintained a current policy of insurance; [~~or~~]
4 has not maintained inspections or obtained the proper
5 department certification of [~~his carnival rides~~] the amusement
6 ride or device; or it is determined after inspection that the
7 amusement ride or device is hazardous or unsafe or for any good
8 cause within the meaning and purpose of the Amusement Ride and
9 Device Safety Act, including failure to install or operate the
10 amusement ride or device in compliance with the law or failure
11 to comply with the minimum safety standards approved by
12 American society for testing materials international standards
13 or the national electrical code. The operation of [~~the~~] an
14 amusement ride or device shall not resume until the requisite
15 insurance is in effect, inspections have been made and the
16 requisite certificates have been filed with the department [~~and~~
17 ~~the local government entity~~] or the hazardous or unsafe
18 condition is remedied to the satisfaction of the superintendent
19 of regulation and licensing.

20 B. The department may appear in its own name in the
21 district court of Santa Fe county or any other county having
22 jurisdiction to prevent violations or to enforce the provisions
23 of the [~~Carnival~~] Amusement Ride [~~Insurance~~] and Device Safety
24 Act, the orders, rules and regulations, codes and minimum
25 standards made pursuant to [~~this~~] that act by injunction,

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1 mandamus or any other proper legal proceeding without bond,
2 including an order not to move the [~~carnival~~] amusement ride or
3 device.

4 C. The local law enforcement agency shall have the
5 authority to enforce the provisions of the [~~Carnival~~] Amusement
6 Ride [~~Insurance~~] and Device Safety Act. [~~Any~~] A person who
7 does not maintain liability insurance on [~~a carnival~~] an
8 amusement ride or device, operates [~~a carnival~~] an amusement
9 ride or device or authorizes the operation of [~~a carnival~~] an
10 amusement ride or device that does not have insurance, does not
11 annually have [~~his carnival rides~~] the amusement ride or device
12 inspected or does not file the proper certificates as set forth
13 in the [~~Carnival~~] Amusement Ride [~~Insurance~~] and Device Safety
14 Act is guilty of a misdemeanor and upon conviction the court
15 shall impose a fine of up to one thousand dollars (\$1,000) a
16 day for the operation of each ride or device.

17 D. A person is subject to a civil penalty not to
18 exceed one thousand dollars (\$1,000) per amusement ride or
19 device for each day of noncompliance with any provision of the
20 Amusement Ride and Device Safety Act or rules promulgated
21 pursuant to the act. All civil actions shall comply with the
22 procedures set out in the Uniform Licensing Act."

23 SECTION 6. Section 57-25-5 NMSA 1978 (being Laws 1993,
24 Chapter 284, Section 5) is amended to read:

25 "57-25-5. LIABILITY--LIMITATIONS.--No provision of the

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1 ~~[Carnival]~~ Amusement Ride ~~[Insurance]~~ and Device Safety Act
2 shall be construed to place any liability on the state or on
3 the department with respect to any claim by any ~~[person]~~
4 individual, firm or corporation relating to ~~[a carnival]~~ an
5 amusement ride or device or to any injury or damages arising
6 from ~~[a carnival]~~ an amusement ride or device."

7 **SECTION 7.** A new section of the Amusement Ride and Device
8 Safety Act is enacted to read:

9 "[NEW MATERIAL] AMUSEMENT RIDE AND DEVICE SAFETY FUND.--
10 The "amusement ride and device safety fund" is created in the
11 state treasury. The fund shall consist of all filing fees
12 received by the department pursuant to the Amusement Ride and
13 Device Safety Act. Money in the amusement ride and device
14 safety fund is appropriated to the department for the purpose
15 of carrying out the provisions of the Amusement Ride and Device
16 Safety Act. The fund shall not be expended for any purpose
17 other than carrying out the provisions of the Amusement Ride
18 and Device Safety Act."

19 **SECTION 8.** REPEAL.--Section 57-25-6 NMSA 1978 (being Laws
20 1993, Chapter 284, Section 6) is repealed.

21 **SECTION 9.** EFFECTIVE DATE.--The effective date of the
22 provisions of this act is July 1, 2017.