

CARNIVAL OR AMUSEMENT RIDES

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House Bill 4527 as introduced
Sponsor: Rep. Thomas A. Albert
Committee: Regulatory Reform
Complete to 4-19-21

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 suspended, denied, 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.

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 eliminate this provision. Instead, LARA could deny, suspend for a specified period of time, or revoke any permit issued under the act. LARA could also impose an administrative fine of up to \$2,500 for each violation, for each day the violation exists, against the owner of a ride if LARA or a federal, state, or local law enforcement officer finds that the ride has operated or is operating under any of the following conditions:

- With a mechanical, structural, or electrical defect that affects patron safety, of which the owner or operator has knowledge or, through the exercise of reasonable diligence, should have knowledge.
- In a manner or circumstance that presents a risk of *serious injury* to a patron.
- At a speed in excess of its maximum safe operating speed.
- In violation of the act or any rule adopted under it.
- In violation of an order issued by LARA or any court with appropriate jurisdiction.

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.

Permit suspensions and revocations

In its order suspending a permit, LARA would have to specify the time period during which the suspension is effective, which could not exceed 30 days. The permit would remain suspended for the specified time, subject to any departmental or court-ordered rescission or modification issued prior to the expiration of the suspension period.

Before expiration of the suspension period, the owner could apply for an inspection of the ride that is the subject of the suspension. LARA would have to inspect the ride not more than five business days after the date on which the owner applied for the inspection. If the ride is found to be in compliance, the permit would have to be reinstated. If the ride remains in noncompliance after the suspension period expires, LARA would have to order an additional suspension period of up to 15 days. If the ride remains in noncompliance after a final inspection following the additional suspension period, LARA could revoke the ride's permit.

If a ride's permit is revoked, the owner could not apply for another permit or inspection certificate for the ride for a period of one year beginning on the date on 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 for a period of one year beginning on the date the court issues a final order sustaining the revocation.

While a permit for a ride is suspended or revoked, an owner could not engage in or attempt to engage in any operation of that ride. LARA could add more time to a suspension period if an owner requests additional time not more than 10 days after the date on which the suspension was ordered.

In addition to the above, and notwithstanding the existence of any other adequate remedy at law, LARA could bring an action, in the circuit court in the county in which the violation occurred or is about to occur, to enjoin the violation of the provision of the act or departmental rule. On competent and substantial evidence of the violation or threatened violation presented by LARA to the court, the court would have to immediately issue the temporary or permanent injunction sought by LARA. The court would have to issue the injunction without bond.

Before imposing a fine or seeking any remedies or penalties under the bill 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 by carnival or amusement ride owner

The bill would require an owner to provide to LARA, at no cost to the department, a copy of the manufacturer's current recommended operating instructions in his or her possession for a ride owned by him or her and any written bulletins in his or her possession concerning the safety, operation, or maintenance of the ride.

The owner or operator of a ride would be required to maintain, on a department-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 if it includes, at a minimum, the information required on the department-prescribed form. A record of the training would have to be accessible by the owner and made available to the LARA on request.

LARA would be prohibited from issuing a permit to an owner unless the owner satisfied the above requirements.

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.

In addition to the above, the bill would require an owner or operator of a ride to report to LARA by email within 12 hours 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. LARA, after consultation with the owner of the ride involved in a fatality or serious injury, could require that the scene of the accident be secured and not disturbed to any greater extent than necessary for the removal of a deceased or injured individual. If a ride is removed from service due to an accident, and LARA requires the scene to be secured, the department would have to order an immediate investigation of the secured site and the ride could not be released for repair or operation until after the investigation is completed.

The bill would take effect September 30, 2022.

MCL 408.652

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.