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House Bill 4527 (Substitute H-1 as passed by the House)

Sponsor: Representative Thomas A. Albert

House Committee: Regulatory Reform  
Rules and Competitiveness

Senate Committee: Regulatory Reform

Date Completed: 5-9-22

### **CONTENT**

**The bill would amend the "Carnival-Amusement Safety Act" to do the following:**

- **Modify certain terms and definitions.**
- **Prohibit the Department of Licensing and Regulatory Affairs (LARA) from issuing a permit to an owner of a carnival or amusement ride unless he or she maintained the training records and emergency response plan specified in the bill.**
- **Require LARA to issue a permit to operate after inspection if the ride and its owner were found to be in compliance with the Act and had a copy of the training records and emergency response plan specified in the bill.**
- **Eliminate language pertaining to temporary cessation of a ride's operation and prescribe the circumstances under which the Department could suspend a permit to operate a ride.**
- **Prescribe the procedures for suspension or revocation of a permit to operated and penalties for operating a carnival or amusement ride while a permit was suspended or revoked.**
- **Require the owner of a carnival or amusement ride to maintain specified training records and an emergency response plan, and specify the information an emergency response plan would have to include.**
- **Modify the procedure for reporting a serious injury or fatality that occurred on a carnival or amusement ride.**

The bill also would repeal Section 13 of the Carnival-Amusement Safety Act, which governs the temporary cessation of operation of a carnival ride if it is determined after inspection to be unsafe.

The bill would take effect on September 30, 2022.

#### **"Owner", "Operator"**

Under the Act a person may not operate a carnival-amusement ride without a permit issued by the Director of LARA. On or before March 1 of each year, an operator must apply for a permit to the Director on a form furnished by the Director and containing the information required by the Department. Where the bill refers to carnival-amusement ride, the bill would

refer to "carnival or amusement ride". Also, LARA could not issue a permit to an owner unless the owner satisfied the requirements described in Section 19a (which the bill would create).

"Operator" or "owner" 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. The bill would define these terms separately. "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, corporation, both profit and nonprofit, or the State and any of its political subdivisions and their departments and agencies. (Generally, unless specified otherwise, references to an owner would replace those to an operator.)

### Permitting Process

The Department must inspect a carnival or amusement ride before it is initially put into operation for the public's use and at least once a every year while in operation unless operation of the carnival or amusement ride is authorized on a temporary permit. The Department may inspect a carnival or amusement ride each time it is disassembled and reassembled. If, after inspection, a carnival or amusement ride is found to comply with the Department's rules, the inspector must issue a permit to operate.

Under the bill, LARA would have to issue a permit to operate after inspection if all the following occurred:

- The carnival or amusement ride and its owner were found to be in compliance with the Act and the rule promulgated under the Act, as determined by LARA.
- The owner had a copy of a record of training for each employee authorized to operate, assemble, disassemble, or conduct maintenance on a carnival or amusement ride as required under Section 19a on site.
- The owner had a copy of an emergency response plan as required under Section 19a on site.

### Additions/Alterations

Before a new carnival or amusement ride is erected, or whenever an addition or alteration is made that changes the structure, mechanism, classification, or capacity of the ride, the operator must file with the Department a notice of his or her intention and any plans or diagrams requested by the Director. Under the bill, after an addition or alteration was made, the owner would have to request an inspection from the Department, and the carnival or amusement ride would have to be inspected before the owner could operate it.

### Permit Suspension & Penalties

Currently, the Act allows the Director of LARA to order a temporary cessation of operations for a carnival-amusement ride when the inspection of the ride has been impeded, obstructed or interfered with. The order to cease operations must remain in effect until an inspection has been made and the ride has been found safe for use. The bill would eliminate this language.

Instead, LARA could suspend a permit for any of the following reasons:

- After inspection, the ride was determined to be hazardous or unsafe.
- An inspection of a ride had been impeded, obstructed, or interfered with.
- An owner failed to submit a completed application or pay the required fee within 30 calendar days of March 1.

-- An owner failed to report an accident or suspend operation of a ride or failed to request an inspection.

If LARA suspended a permit, a reinspection would have to take place before a permit was reinstated. The owner could request a reinspection when they believed they compliant with the act. The reinspection would take place not more than 10 days after the date on which the owner requested it and the Department would have to give the owner advance notice of the reinspection. If after three inspections, during a suspension period, LARA found the carnival or amusement ride remained noncompliant, it could revoke the permit for the ride.

If a permit for a ride were revoked, the owner of the ride 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 occurred. If judicial review were sought and a stay or the revocation was obtained, the owner could not apply for another permit until March 1 of the year following the year in which the date of a final order of the court sustaining the revocation was entered.

An owner would be prohibited from operating a carnival or amusement ride without a permit or while a permit was suspended or revoked. At the request of the Director, the Attorney General could bring an action seeking a civil fine against the owner of a carnival or amusement ride for a violation of this prohibition. For each day that the owner operated the ride without a permit or while a permit was suspended or revoked, the owner could be ordered to pay a civil fine of \$2,500. The fine would have to be paid to the General Fund and credited to LARA for performance of its duties under the Act.

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

Before the Attorney General brought an action seeking a civil fine or before seeking any remedies or penalties for a violation of the Act or any rule promulgated by LARA, the Department could issue a letter of warning to the owner of the carnival or amusement ride specifying the violation and directing the owner to immediately correct the violation.

#### Carnival Safety Requirements

The bill would create Section 19(a) to specify that, on request, an owner, at no cost to the Department, would have to provide LARA a copy of the manufacturer's operating instructions for a carnival or amusement ride owned by the owner and any written bulletins concerning the safety, operation, or maintenance of the ride.

The owner of a carnival or amusement ride would have to maintain, on a form prescribed by rule, a record of training for each employee authorized to operate, assemble, disassemble, or conduct maintenance on a carnival or amusement ride, an emergency response plan, and a record of employee training on emergency response procedures. In place of the forms prescribed by the Department, an owner could request approval of an alternative form if that form included, at a minimum, the information required on the form prescribed by the Department. The training records and emergency response plan would have to be accessible by the owner and made available to the Department on request.

Under the bill, a person who falsified a record of training would be guilty of a misdemeanor and could be imprisoned for up to 90 days and would have to be fined at least \$1,000 but not more than \$2,000.

#### Emergency Response Plan

Under proposed Section 19a, the emergency response plan would have to include information on, at a minimum, all of the following:

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

The Act prohibits an individual from operating a carnival or amusement ride unless he or she has been trained in specified procedures and duties, including the general and ride-specific procedures that he or she must follow in the event of an unusual condition, interruption in operation, injury, emergency, or evacuation. Under the bill, this would include those procedures laid out in the owner's emergency response plan.

#### Injury or Fatality

Under the Act, before leaving the operator's premises, a rider or his or her parent or guardian must report in writing to the operator or employee or agent of the operator any injury sustained on a carnival or amusement ride. The report must include the information listed in the Act. If the rider or his or her parent or guardian is unable to do so because of the severity of the rider's injuries, the rider or his or her parent or guardian must file the report as soon as possible. The failure of a rider or his or her parent or guardian to report the injury does not affect the rider's ability to bring a civil action related to the incident. The bill would remove this language.

Instead, under the bill, an owner or operator of a carnival or amusement ride would have to report immediately to the Department by telephone any accident in which a fatality occurred or an individual suffered a serious injury resulting from the structural or mechanical failure of the ride, or in which it appeared the construction, design, or function of the carnival or amusement ride could have directly contributed to the fatality or serious injury. If an accident occurred on a day the Department was closed, the owner would have to report the incident to the Department by 9 AM of the next business day that the Department was open. The owner would have to remove the ride from service, secure the scene of the accident, and not disturb the scene to any greater extent that was necessary for the removal of a deceased or injured individual. The ride could not be released for repair or operation until after an inspection of the ride was completed and the ride was determined to not be hazardous or unsafe.

"Serious injury" would mean a physical injury that is not necessarily permanent but that constitutes serious bodily disfigurement or that seriously impairs the functioning of a body organ or limb. The term includes 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 a hand, foot, finger, or thumb.
- Loss of any eye or ear or use of an eye or ear.
- Loss or substantial impairment of a bodily function.

- Serious visible disfigurement.
- A comatose state that lasts for more than three days.
- Measurable brain damage or mental impairment.
- A skull fracture or other serious bone fracture.
- Subdural hemorrhage or hematoma.

MCL 408.625 et al.

Legislative Analyst: Eleni Lionas

### **FISCAL IMPACT**

The bill would have an indeterminate, likely negative, fiscal impact on State government and no fiscal impact on local units of government.

Under the bill, LARA would have to perform an increased number of administrative duties as well as in-person inspections. Although owners would have to pay a \$2,500 per diem civil fine for operating a ride without an active, valid permit, the amount collected likely would not fully offset the costs to LARA. The Department would have to fulfill some of the regulatory and legal obligations contained in the bill regardless of whether the fines were assessed and collected. The civil fine revenue would be deposited into the General Fund and credited to LARA for regulatory duties under the Act. It is not known how much civil fine revenue would be assessed or collected.

The costs of seeking or issuing an injunction would not be fiscally significant to either LARA or State courts.

The bill specifies that a person who falsified a training record required under the Act would be guilty of a misdemeanor. More misdemeanor convictions could increase resource demands on law enforcement, court systems, community supervision, jails, and correctional facilities. For any increase in prison intakes, in the short term, the marginal cost to State government would be approximately \$5,800 per prisoner per year. Any associated increase in fine revenue would increase funding to public libraries. The revenue and expenditures pertaining to the misdemeanor language would depend on the number of violations and the number of people prosecuted for these offenses.

Fiscal Analyst: Joe Carrasco, Jr.  
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.