

CHAPTER 166

AN ACT concerning carnival-amusement ride safety and amending and supplementing P.L.1975, c.105.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 2 of P.L.1975, c.105 (C.5:3-32) is amended to read as follows:

C.5:3-32 Definitions relative to carnival-amusement rides.

2. As used in this act, except where a different meaning is clearly implied by the context:

a. "Carnival-amusement ride" or "ride" means any mechanical device or devices, including but not limited to water slides exceeding 15 feet in height, which carry or convey passengers along, around, or over a fixed or restricted route or course for the purpose of giving its passengers amusement, pleasure, thrills or excitement; and any passenger or gravity propelled ride when located in an amusement area or park in which there are other rides covered by P.L.1975, c. 105 (C. 5:3-31 et seq.); provided, however, that this shall not include locomotives weighing more than seven tons, operating on a track the length of which is one-half mile or greater, the gauge of which is three feet or greater, and the weight of which is at least 60 pounds per yard. Any facility exempted pursuant to this subsection shall be under the jurisdiction of the Department of Transportation for the purpose of safety inspection.

b. "Owner" means a person who owns, leases, controls, or manages the operations of a carnival-amusement ride, including the State or any of its subdivisions.

c. "Ride operator" means any person or persons actually engaged in or directly controlling the operations of a carnival-amusement ride.

d. "Commissioner" means the Commissioner of Community Affairs.

e. "Department" means the Department of Community Affairs.

f. "Advisory board" means the Advisory Board on Carnival-Amusement Ride Safety.

g. "Modification" means any material change to a load-bearing structural member, a mechanical, electrical or hydraulic drive or control feature, or a restraint or other protective feature. "Modify" means to make a modification, as defined in this subsection g.

h. "Amusement ride manufacturer" or "manufacturer" means a person who obtains type certification for a carnival-amusement ride and who has responsibility for the design and manufacture of any carnival-amusement ride to be used or installed in this State, or sold for use in the State, and includes any entity controlled by the manufacturer.

i. "New ride" means a ride of a type that has not previously been assigned a type certification by the department.

j. "Type certification" means a certification that is granted to a manufacturer by the department after review of a new ride application and that is applicable to all rides of essentially the same design and manufacture with regard to structural, mechanical, electrical, hydraulic drive and control features, and restraint and other protective features.

k. "Individual approval" means an approval that is granted to an owner or operator of an individual ride that is not type certified, which is granted by the department after review of a ride application and is applicable only to that individual ride.

l. "New Jersey serial number" means a unique identifying number assigned to each individual ride at the time that a permit is first issued for it, which remains with the ride so long as it exists in this State.

m. "Supplemental modification certification" means a certification that is granted to a person other than the manufacturer by the department after review of an application for modification.

n. "Safety bulletin" means a supplemental notification delivered by the manufacturer or the holder of a supplemental modification certification to the owner or operator that contains new information or new recommendations for inspections, testing, operation or training.

o. "Time tested" means a type of amusement ride which is found by the department to be simple in operation and impose insignificant forces on riders, or which is found by the department to have a long history of safe operation.

2. Section 3 of P.L.1975, c.105 (C.5:3-33) is amended to read as follows:

C.5:3-33 Advisory Board on Carnival-Amusement Ride Safety.

3. a. There is hereby established within the Department of Community Affairs an Advisory Board on Carnival-Amusement Ride Safety to consist of 13 members, of whom two shall be representatives of the carnival-amusement ride manufacturers, one shall be a representative of the owners and operators of mobile carnival-amusement rides, one shall be a representative of the owners and operators of carnival-amusement rides that are at a fixed location, one shall be a representative of the owners and operators of water parks, one shall be an owner or operator of an amusement park or enterprise, one shall be a representative of the insurance underwriters, one shall be a licensed professional engineer, four shall be public members, and one shall be a representative of the Department of Community Affairs who shall be appointed by the commissioner. The 12 citizen members shall be appointed by the Governor, with the advice and consent of the Senate. The Governor shall designate the chairman and vice-chairman of the advisory board.

b. Of the nine members first to be appointed by the Governor, three shall be appointed for terms of two years, three for terms of three years, and three for terms of four years. All appointments thereafter, including but not limited to the members added by P.L. , c. ,(now pending before the Legislature as this bill) shall be made for terms of four years. All members so appointed shall serve until their respective successors are appointed and shall qualify, and any vacancy occurring among the appointed members of the board shall be filled in the same manner as the original appointment for the unexpired term and the appointee shall serve until a successor is appointed and shall qualify. For the purposes of this section, the member representing owners and operators of water parks shall be the successor to the member who is the owner or operator of a registered fair and shall be appointed only upon the expiration of the term of that member, unless a vacancy in that seat occurs sooner, in which case a representative of the owners and operators of water parks shall be appointed to fill the vacancy.

3. Section 6 of P.L.1975, c.105 (C.5:3-36) is amended to read as follows:

C.5:3-36 Rules, regulations.

6. a. The Commissioner of Community Affairs, pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt and promulgate rules and regulations for the safe design, manufacture, installation, repair, maintenance, use, operation and inspection of all carnival-amusement rides as the department may find necessary for the protection of the general public, including, but not limited to, regulations concerning written warnings and directions regarding the use of carnival-amusement rides. The commissioner is authorized to adopt by reference, with or without amendment, any code or standard issued by a nationally recognized organization, upon a finding that adoption of the code or standard would promote the purposes of P.L.1975, c.105 (C.5:3-31 et seq.); and is further authorized to recognize any code or standard issued by an internationally recognized organization upon a finding that its provisions are equivalent to codes or standards adopted pursuant to P.L.1975, c.105 (C.5:3-31 et seq.).

b. The commissioner shall prepare, and make available, a plain language summary of the requirements of P.L.1975, c.105 (C.5:3-31 et seq.) and the rules and regulations adopted pursuant to P.L.1975, c.105 (C.5:3-31 et seq.) which shall delineate the responsibilities of all parties for rides which are type certified, rides which have a supplemental modification certification, rides which have individual approvals, and rides which have been accepted pursuant to a previously issued New Jersey serial number.

4. Section 6 of P.L.1998, c.10 (C.5:3-36.2) is amended to read as follows:

C.5:3-36.2 Posting of warning notices; contents.

6. Each person who operates a carnival-amusement ride shall post a written notice which complies with the provisions of this section. The notice shall be posted in a conspicuous public place on or near the ride in a manner consistent with standards set by the Commissioner of Community Affairs and shall include:

a. The prominently displayed statement: "State law requires that each rider must obey all

written warnings and directions regarding this ride and refrain from behaving in a reckless manner which may cause or contribute to injury of the rider or others. Failure to comply is a violation of law and subject to a penalty under the New Jersey Code of Criminal Justice."; and

b. All applicable written warnings and directions regarding the use of the ride which are consistent with regulations adopted by the department based upon standards of nationally recognized technical or scientific authorities that research the proper use of the ride and the potential injuries in connection with improper use of the ride.

5. Section 9 of P.L.1975, c.105 (C.5:3-39) is amended to read as follows:

C.5:3-39 Schedule of fees.

9. The department shall determine a schedule of inspection, carnival-amusement ride type certification, individual approval and carnival-amusement ride permit fees. The department shall, from time to time, make further adjustments in the schedule to bring it, as nearly as practicable and within the limits of reasonableness, into line with the costs of implementing the provisions of this act. The fees shall be applied toward enforcement and administration costs of the Division of Codes and Standards in the Department of Community Affairs.

6. Section 11 of P.L.1975, c.105 (C.5:3-41) is amended to read as follows:

C.5:3-41 Annual issuance of permit, inspection.

11. a. No carnival-amusement ride may be operated without a permit issued by the department. Before commencing operations and annually thereafter, an owner shall apply for a permit to the department on a form furnished by the department and containing such information as the department may require. All carnival-amusement rides shall be inspected before they are put into operation for the public's use and thereafter at least once every year. If, after inspection, a carnival-amusement ride is found to comply with the rules and regulations of the department, the department shall issue a permit authorizing the ride for use by the public. Permits shall be issued for a period of one year unless extended by the commissioner or suspended or revoked in accordance with section 7 of P.L.1998, c.10 (C.5:3-41.1). Carnival-amusement rides shall be tested, maintained and inspected periodically by the owner, in accordance with standards promulgated by the department.

b. The permit application for any carnival-amusement ride for which type certification has been approved shall refer to the carnival-amusement ride type certification number issued to the manufacturer by the department.

c. The permit application for any carnival-amusement ride not having a type certification shall include the information required to be provided pursuant to section 15 of P.L.1975, c.105 (C.5:3-45).

d. No person shall modify a carnival-amusement ride which has a type certification unless the modification is pursuant to an amended type certification issued to the manufacturer or is pursuant to a supplemental modification certification.

e. No person shall modify a carnival-amusement ride for which no type certification exists unless the modification is pursuant to a supplemental modification certification or the permit holder or applicant has submitted to the department the information required under section 12 of P.L.1975, c.105 (C.5:3-42).

7. Section 12 of P.L.1975, c.105 (C.5:3-42) is amended to read as follows:

C.5:3-42 Certification of type required for operation of ride; exceptions.

12. a. Except as permitted by this section and sections 13 and 15 of P.L.1975, c.105 (C.5:3-43 and 5:3-45), no carnival-amusement ride, including a modified carnival-amusement ride, shall be operated, installed or used in the State unless the manufacturer has obtained a carnival-amusement ride type certification from the department. Except as permitted by this section and sections 13 and 15 of P.L.1975, c.105 (C.5:3-43 and 5:3-45), no ride shall be modified unless the manufacturer has provided the information required by this section and the manufacturer has

obtained type certification for the ride as modified. The following information, prepared by a licensed professional engineer or other qualified person acceptable to the department, together with such additional information as the department may require, shall be provided to the department for review:

(1) A safety analysis of the ride and ride equipment, which identifies, recognizes and mitigates any reasonably foreseeable safety hazards in the ride, identifies its accommodation of riders and users, and identifies its operation and maintenance. The analysis shall be a comprehensive, thorough review and assessment of the ride that utilizes an organized, step-by-step, feature-by-feature process. The analysis shall be documented in detail, listing those reasonably foreseeable safety hazards that are identified and describing the means used to mitigate each hazard;

(2) A detailed load and stress analysis, including fatigue life protections where appropriate, and recommendations for those nondestructive tests as may be reasonably necessary to prevent failure under load;

(3) A detailed set of installation and erection instructions indicating loads to be carried by site-built foundation or support structures;

(4) A periodic maintenance and inspection schedule required to be carried out by owners and operators and necessary to ensure continued safety; and

(5) Operation procedures and training requirements for ride operators and attendants, including training regarding any safety-based limitations on who may ride.

The department may waive the requirements of paragraphs (1) and (2) of this subsection a. for a ride which has previously received a New Jersey serial number or is determined to be time-tested.

b. Each manufacturer of a new carnival-amusement ride, including, without limitation, a modified ride, to be erected, used or installed in this State, shall have a written quality assurance program used or to be used in conjunction with the design, manufacture, construction, modification or reconditioning of the ride. Quality assurance documents, including material certifications, test reports and inspection reports, shall be provided to the department upon request by the department and shall be retained by the manufacturer for such periods of times as the department may by rule require.

c. A type certification shall continue to be valid only so long as the manufacturer continues to provide technical support for the ride and shall, in any event, be valid for a period of three years or whatever shorter period the commissioner approves and shall thereafter be subject to renewal.

d. No information submitted in support of a type certification application that is designated by the manufacturer as being of a proprietary nature shall be considered a public record. All type certification applications shall be reviewed in accordance with rules in effect as of the date that the design for the ride was first contracted for; except that any safety bulletin that is applicable to rides of that type shall govern, regardless of the date of the contract.

e. A person, other than the manufacturer, may obtain a supplemental modification certification from the department upon submission of all of the information required of a manufacturer and upon review by the department for conformity with the codes and standards adopted pursuant to P.L.1975, c.105 (C.5:3-31 et seq.).

f. A complete application for type certification or supplemental modification certification shall be either approved or denied within 30 days of the date of filing. In the event of a denial, a written statement of the reasons for the denial shall be provided to the applicant.

8. Section 13 of P.L.1975, c.105 (C.5:3-43) is amended to read as follows:

C.5:3-43 Individual approval of ride, required; conditions.

13. If a carnival-amusement ride was manufactured prior to the effective date of P.L.2001, c.166 or the type certification for the ride is not renewed by the manufacturer or is revoked by the department, then the ride shall not be operated, installed or used in this State unless the owner or operator has obtained a carnival-amusement ride individual approval from the department. No ride not having a type certification or supplemental modification certification

shall be modified unless the owner or operator has provided the information required by section 12 of P.L.1975, c.105 (C.5:3-42) and the owner or operator of the ride has obtained an individual approval for the ride as modified. Information required by the department regarding any ride shall be provided by a licensed professional engineer or other qualified person acceptable to the department.

9. Section 14 of P.L.1975, c.105 (C.5:3-44) is amended to read as follows:

C.5:3-44 Order of temporary cessation of operation, suspension of permit; reconsideration hearing.

14. a. The department may order, in writing, a temporary cessation of operation of a carnival-amusement ride or suspend the permit issued for that ride if it has been determined after inspection, in accordance with standards promulgated by the department, to be hazardous or unsafe or that there has been a violation of P.L.1975, c.105 (C.5:3-31 et seq.) or any rule or regulation promulgated pursuant to that act. Operation shall not resume until such conditions are corrected to the satisfaction of the department.

b. The commissioner shall reinspect a carnival-amusement ride for which a permit has been suspended within 48 hours of receiving written notice from the owner of the ride stating that the condition or violation for which the permit was suspended has been corrected. If, upon reinspection, the commissioner determines that the condition or violation has been corrected, the commissioner shall reinstate the permit immediately.

c. If a person whose permit has been suspended or revoked, or whose application for a permit has been denied, believes that the violation or condition justifying suspension, revocation or denial of the permit does not exist, the person may apply to the commissioner for a reconsideration hearing in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). The reconsideration hearing shall be conducted, and a final decision issued by the commissioner, within 48 hours of the receipt of the request, except as extended with the consent of both parties. Failure to issue a decision shall constitute denial of the requester's appeal. The decision of the commissioner shall be final, subject to the right of the parties to appeal to the Superior Court of New Jersey, Appellate Division.

10. Section 15 of P.L.1975, c.105 (C.5:3-45) is amended to read as follows:

C.5:3-45 Use of rides not prohibited; conditions.

15. a. This act shall not be construed as to prevent the use of any carnival-amusement ride if the ride has a New Jersey serial number and is maintained in a safe condition and in conformance with the rules and regulations of the department, and the owner or operator of the ride provides to the department a manual prepared by a licensed professional engineer or other qualified person acceptable to the department which contains the following information:

(1) A schedule of periodic inspections and maintenance required to be carried out by owners and operators as needed to ensure continued safety;

(2) A schedule of nondestructive testing that is necessary to ensure the continuing safety and soundness of the ride;

(3) Operation procedures and training requirements for ride operators and attendants, including training regarding safety-based limitations on who may ride;

(4) For mobile rides, a detailed set of erection instructions including any necessary support requirements; and

(5) Any other information as the commissioner may prescribe by regulation.

b. No carnival amusement ride which has a New Jersey serial number shall be modified unless:

(1) All of the requirements of subsection a. of this section are met; and

(2) The modification is pursuant to a supplemental modification certification or the owner or operator of the ride obtains individual approval of the modification in accordance with the provisions of section 12 of P.L.1975, c.105 (C.5:3-42).

11. Section 16 of P.L.1975, c.105 (C.5:3-46) is amended to read as follows:
C.5:3-46 Maintenance, inspection records.

16. a. The owner and ride operator shall retain at all times up-to-date maintenance and inspection records for each carnival-amusement ride in accordance with such rules and regulations as the department may prescribe. Among other things, such records shall contain information of the date and nature of all inspections, whether by a departmental inspector or a person in the employment of the owner or of any insurer of the carnival-amusement ride, as well as of any violations and the types of actions taken to rectify the violations. All breakdowns or repairs of any mechanical part shall be duly noted. The department may also require a full safety inspection of any ride whose operation results in any injury or death before operation of that ride can be resumed.

b. The department shall conduct an investigation of each carnival-amusement ride incident in which one or more persons suffer death or serious injury and shall identify those measures which may be required to prevent the future occurrence of death or serious injury under similar circumstances and, in furtherance of any investigation pursuant to this subsection, the department may issue and enforce subpoenas to compel the testimony of any person who may have knowledge of any relevant matters and the production of any relevant documents.

12. Section 17 of P.L.1975, c.105 (C.5:3-47) is amended to read as follows:

C.5:3-47 Report of accidents, injuries, fatalities.

17. It shall be the duty of every owner and ride operator to report immediately, on a form to be provided by the department, any accidents and resulting injuries or fatalities incurred during the operation of any carnival-amusement ride, other than minor incidents, as defined by rule, or any mechanical malfunction of any ride while in use necessitating suspension of operation for diagnostic or corrective work, and to cease operation of any ride whose breakdown or malfunction causes a fatality or serious injury to any person, subject to rules and regulations promulgated by the department.

Each owner and operator shall maintain, and make available for inspection by the commissioner, records of all minor incidents incurred in the operation of a carnival-amusement ride. As used in this section, "minor incidents" means those incidents designated by rule of the commissioner to be minor in nature.

As used in this section, "mechanical malfunction" means and includes structural failure of a load-bearing element, mechanical or electrical failure of a drive or control system component, or failure of a restraint system, which materially compromises ride safety.

13. Section 20 of P.L.1975, c.105 (C.5:3-50) is amended to read as follows:

C.5:3-50 Insurance or bond required for operation of ride.

20. No persons shall operate a carnival-amusement ride unless at the time there is in existence (a) a policy of insurance written on a per occurrence basis in an amount of not less than \$1,000,000 per occurrence insuring the owner or operator against liability for injury suffered by any person riding the carnival-amusement ride, or (b) a bond in a like amount; provided, however, that the aggregate liability of the surety under such bond shall not exceed the face amount thereof. The policy shall be procured from one or more insurers acceptable to the State Commissioner of Banking and Insurance and either (a) licensed to transact insurance in the State of New Jersey, or (b) approved as surplus line insurers pursuant to section 11 of P.L.1960, c.32 (C.17:22-6.45).

C.5:3-42.1 Information provided by manufacturers; evaluation of incidents; engineering analyses.

14. a. All persons manufacturing carnival-amusement rides to be erected, used or installed in this State shall provide to the department, on a form provided by the department, the information that the commissioner shall prescribe by rule.

b. Upon notification from an owner or operator of an incident, whether in this State or

elsewhere, involving a critical component of a ride, the manufacturer of the ride shall promptly evaluate the information in the notification and, if necessary, provide, in the form of a safety bulletin, the results of that evaluation, together with any recommendations, to the department and to all known owners and operators of the ride in this State.

c. The department shall also have the authority to prohibit the sale, erection, use or installation of any carnival-amusement ride in this State upon a final determination, following exhaustion of all available remedies at law, that the manufacturer of the ride has repeatedly failed to comply with orders requiring engineering analyses to be prepared and submitted to the department or safety bulletins to be issued for individual carnival-amusement rides or classes of carnival-amusement rides or upon a final determination, following exhaustion of all available remedies at law, that the manufacturer has refused, on a repeated and egregious basis, to comply with orders to carry out the duties and obligations imposed by P.L.1975, c.105 (C.5:3-31 et seq.).

d. The requirements imposed by this section on a manufacturer shall apply equally to any person who obtains a supplemental modification certification.

15. This act shall take effect on the October 1 next occurring after the 150th day after enactment, but the Commissioner of Community Affairs may take any anticipatory administrative action in advance of that date as necessary for implementation of the act.

Approved July 20, 2001.