

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 83rd General Assembly
3 Regular Session, 2001
4

As Engrossed: S3/13/01
A Bill

SENATE BILL 752

5 By: Senator Critcher
6 By: Representative R. Smith
7
8

9 **For An Act To Be Entitled**

10 AN ACT TO AMEND ARKANSAS CODE 23-89-501 THROUGH
11 23-89-507; TO REPEAL ARKANSAS CODE 20-27-101
12 THROUGH 20-27-104; TO CONSOLIDATE THE LAWS
13 REGARDING AMUSEMENT RIDE SAFETY; TO EXPAND THE
14 DIRECTOR'S AUTHORITY OVER AMUSEMENT RIDE SAFETY;
15 TO SET A FEE SCHEDULE FOR INSPECTIONS; TO
16 ESTABLISH PATRON RESPONSIBILITIES AND OPERATOR
17 QUALIFICATIONS; TO REQUIRE ACCIDENT REPORTING AND
18 RECORD MAINTENANCE; TO REQUIRE SAFETY TESTS; TO
19 CREATE THE AMUSEMENT RIDE SAFETY ADVISORY BOARD;
20 AND FOR OTHER PURPOSES.
21

22 **Subtitle**

23 AN ACT TO AMEND ARKANSAS CODE 23-89-501
24 THROUGH 23-89-507 AND TO REPEAL 20-27-
25 101 THROUGH 20-27-104.
26
27

28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
29

30 SECTION 1. Arkansas Code 23-89-502 is amended to read as follows:
31 23-89-502. Definitions.

32 As used in this subchapter, unless the context otherwise requires:

33 (1) "Amusement Attraction" means any building or structure around,
34 over, and through which persons may be moved by vehicle or mechanically
35 driven device integral to the building or structure, which provides
36 amusement, pleasure, thrills, or excitement, but this term does not include

1 theatres, museums, or enterprises principally devoted to the exhibition of
2 products of agriculture, industry, education, science, religion, or the arts;

3 (2) "Amusement ride" means any mechanical device which carries or
4 conveys passengers along, around, ~~and~~ or over a fixed route or course or
5 within a defined area for the purpose of giving the passengers amusement,
6 pleasure, thrills, or excitement and includes the following:

7 (A) Bungee rides or bungee operations which utilize as a
8 component a bungee cord which is an elastic rope made of rubber, latex, or
9 other elastic type materials whether natural or synthetic;

10 (B) Go-kart, which means a ride in which a vehicle controlled or
11 driven by patrons specifically designed for and run on a fixed course;

12 (C) Inflatable attractions such as "space walks", inflatable
13 slides, inflatable jousting or boxing rings; and

14 (D) Any wave pool, water slide, or other similar attraction that
15 totally or partially immerses a patron in water;

16 (3) "Department" means the Department of Labor;

17 (4) "Director" means the Director of the Department of Labor;

18 (5) "Nondestructive testing" is the development and application of
19 technical methods, including, but not limited to, radiographic, magnetic
20 particle, ultrasonic, liquid penetrant, electromagnetic, neutron
21 radiographic, acoustic emission, visual, and leak testing to examine
22 materials or components in ways that do not impair their future usefulness
23 and serviceability in order to detect, locate, measure, and evaluate
24 discontinuities, defects, and other imperfections; to assess integrity,
25 properties, and composition; and to measure geometrical characters; and

26 (6) "Owner" means any person who owns an amusement ride or attraction,
27 or in the event that the amusement ride or attraction is leased, the lessee.

28
29 SECTION 2. Arkansas Code 23-89-504 is amended to read as follows:

30 23-89-504. Safety inspection and insurance required - Enforcement -
31 Violations.

32 (a) It is unlawful for any person or entity to operate an amusement
33 attraction or amusement ride unless the person or entity maintains liability
34 insurance in the minimum amount required by this subchapter at all times
35 during the operation of the amusement attraction or ride in the state and
36 unless the person has a current safety inspection report made at the time of

1 set-up of the attraction or ride, but before use by the public.

2 (b)(1) The Director of the Department of Labor may conduct
3 examinations and investigations into the affairs of any person or entity
4 subject to the provisions of this subchapter for the purpose of determining
5 compliance with the provisions of this subchapter.

6 (2) The director shall administer and enforce the provisions of
7 this subchapter.

8 (3) The director shall promulgate regulations for the proper
9 administration and enforcement of this subchapter, including regulations
10 establishing minimum safety requirements for the operation and maintenance of
11 amusement rides and attractions.

12 (4) The director shall employ amusement ride inspectors
13 certified by the National Association of Amusement Ride Safety Officials.

14 (c) If the director finds that an operator or owner has failed to
15 comply with the provisions of this subchapter, he may order the operator or
16 owner to immediately cease operating the amusement attraction or ride, ~~or~~ and
17 may impose upon the operator or owner an administrative penalty of not more
18 than ten thousand dollars (\$10,000).

19 (d)(1) If the director finds that an operator or owner failed to
20 comply with the provisions of this subchapter, he shall so inform the
21 prosecuting attorney in whose district any purported violation may have
22 occurred.

23 (2)(A) Upon conviction, the operator or owner shall be guilty of
24 a Class A misdemeanor.

25 (B) Upon conviction of a willful or knowing violation, the
26 operator or owner shall be guilty of a Class D felony.

27 (3) Each day of violation shall constitute a separate offense.

28 (e) The director shall have authority to bring a civil action in any
29 court of competent jurisdiction, without payment of costs or giving bond for
30 costs, to recover any administrative penalty imposed pursuant to this
31 subchapter or to recover any delinquent fees owed pursuant to this
32 subchapter.

33 ~~(e)(f)~~ The director and his deputies, assistants, examiners, and
34 employees and the Director of the Department of Arkansas State Police and his
35 deputies, officers, assistants, and employees and any public law enforcement
36 officer shall not be liable for any damages occurring as a result of the

1 implementation of this subchapter.

2

3 SECTION 3. Arkansas Code 23-89-505 is amended to read as follows:

4 23-89-505. Safety inspections, notice and insurance required -

5 ~~Inspection fees, etc.~~

6 (a) Any person or entity desiring to operate any amusement attraction
7 or amusement ride in this state, other than those specifically exempted in
8 this subchapter, shall as a condition thereof obtain a safety inspection
9 report issued by the owner or operator's liability insurer or an inspector
10 employed by the Department of Labor prior to commencing operation or opening
11 to the public.

12 (b) Each person or entity desiring to operate any amusement attraction
13 or amusement ride in this state, other than those specifically exempted in
14 this subchapter, shall be covered by a policy of insurance issued by an
15 insurance company authorized to do business in Arkansas or by a surplus lines
16 insurer approved in Arkansas and insuring the owner or operator against
17 liability for personal injury or property damage arising out of the use or
18 operation of the amusement attraction or ride, in the minimum amount of one
19 million dollars (\$1,000,000.00) for each incident or occurrence.

20 (c)(1) Any person or entity intending to operate an amusement
21 attraction or ride in this state shall notify the director of such intent and
22 shall notify the director of the location, dates, and times of intended
23 operation.

24 (2) Such notice must be made to the director four (4) days prior
25 to intended operation, excluding Saturdays, Sundays, or any legal holidays.

26 (d) Any person or entity failing to comply with subsection (c) of this
27 section shall be subject to an administrative penalty issued by the Director
28 of the Department of Labor of no more than five thousand dollars (\$5,000.00)
29 in addition to other penalties, both administrative and criminal, contained
30 in this subchapter.

31 ~~(e) The fee for the inspections required by subsection (a) of this~~
32 ~~section and performed by the Department of Labor shall be one hundred dollars~~
33 ~~(\$100.00) and shall be deposited into the Department of Labor Fund Account.~~

34 ~~(f)~~(e) The owner, manager or operator shall promptly file ~~a copy of~~
35 ~~any safety inspection reports and~~ proof of insurance with each fair board,
36 sponsoring organization, lessor, landowner, or other person responsible for

1 an amusement attraction or ride being offered for use by the public for each
2 location in this state where each attraction or ride is in operation or is
3 scheduled to be in operation. The owner, manager or operator shall provide a
4 copy of any safety inspection report to the fair board, sponsoring
5 organization, lessor, landowner, or other person responsible for an amusement
6 attraction or ride being offered for use by the public, upon request or
7 pursuant to contractual agreement.

8
9 SECTION 4. Arkansas Code 23-89-506 is amended to read as follows:
10 23-89-506. Inspections and fees.

11 (a) The Director of the Department of Labor is authorized to inspect
12 each person or entity to ensure compliance with this subchapter. Twice per
13 calendar year, the director shall inspect all permanently placed operational
14 amusement rides or attractions located in this state being operated for
15 profit or charity. All portable amusement rides or attractions shall be
16 inspected by the director every time they are moved to a new location in
17 Arkansas and before they are permitted to commence operation or open to the
18 public.

19 (1) Inflatable attractions and self-contained mobile playgrounds
20 shall be inspected every six months, unless a more frequent schedule of
21 inspections is established by regulation of the director for certain types of
22 inflatable attractions and self-contained mobile playgrounds.

23 (2) Self-contained mobile playgrounds shall be inspected
24 pursuant to subdivision (a)(1) of this section only if such playgrounds
25 contain no mechanical or electrical parts, structures, or additions such as
26 blowers or lights.

27 (b) The director is authorized to make an inspection on an emergency
28 basis when notification pursuant to this subchapter is made less than four
29 (4) days, excluding Saturdays, Sundays, and legal holidays, prior to the date
30 of the operation of the facility, if he determines that the owner or operator
31 could not have reasonably known of the proposed operation prior to the four-
32 day period, and that the owner or operator meets all other requirements for
33 operation in this state.

34 (c) If the director or an authorized employee of the department finds
35 that any amusement ride or attraction is defective in a manner affecting
36 patron safety or unsafe, he shall attach to the amusement ride or attraction

1 a notice and order prohibiting its use or operation. Operation of the
2 amusement ride shall not resume until the unsafe or hazardous condition is
3 corrected and the director or his authorized representative permit such
4 operation.

5 (d) Any inspector certified pursuant to the requirements of this
6 subchapter who, upon inspection of an amusement ride or attraction, finds the
7 ride or attraction to be defective or unsafe shall immediately report the
8 ride or attraction and its condition to the Department of Labor.

9 (e) The director shall charge a fee to be paid by the owner of any
10 amusement ride or amusement attraction for all amusement ride safety
11 inspections performed by any employee of the Department of Labor. Such fees
12 shall be as follows:

- 13 (1) For 1 to 5 rides or attractions \$100.00;
- 14 (2) For 6 to 15 rides or attractions \$200.00;
- 15 (3) For 16 to 25 rides or attractions \$300.00;
- 16 (4) For 26 to 35 rides or attractions \$400.00; and
- 17 (5) For 36 and more rides or attractions \$600.00.

18 (f) The director is authorized by regulation to implement an
19 inspection fee waiver program for the benefit of a county fair association,
20 provided that:

- 21 (1) The county's population is under 15,000 based on U. S.
22 Census Bureau estimates as of July 1, 1999; and
- 23 (2) The county fair association can demonstrate that it would be
24 unable to obtain a carnival for its county fair without such a waiver.

25

26 SECTION 5. Arkansas Code 23-89-507 is amended to read as follows:

27 23-89-507. Inspection by insurance company - Change in coverage.

28 (a)(1) Each insurance company insuring an operator of an amusement
29 attraction or ride as required in this subchapter shall inspect the amusement
30 attraction or rides of the insured for safety at least once each ~~four (4)~~
31 ~~months~~ calendar year.

32 (2) The operator shall maintain a copy of such report at the
33 site of operation of the attraction or ride, together with proof of insurance
34 coverage.

35 (b) If any insurer insuring an operator shall cancel the coverage of
36 the operator, the insurer shall notify the director of the cancellation at

1 least ten (10) days before the cancellation is effective.

2 (c) The insurer shall immediately notify the director if the
3 cancellation notice is rescinded or coverage is reinstated.

4 (d) If the insurer finds any amusement attraction or ride to be unsafe
5 or cancels the insurance coverage and so notifies the director, then the
6 director shall immediately issue a cease and desist order preventing any
7 operation until written documentation is provided to the director that the
8 amusement attraction or ride has been made safe or insurance coverage has
9 been obtained.

10 (e) Any insurance company or surplus lines insurer failing to comply
11 with this section shall be subject to revocation of its certificate of
12 authority or registration by the Insurance Commissioner, or in lieu of
13 suspension or revocation, a fine assessed by the Insurance Commissioner of
14 not more than fifty thousand dollars (\$50,000).

15 (f) Any employee or contractor of an insurer inspecting amusement
16 rides in Arkansas shall be registered and certified by the department
17 pursuant to regulation adopted by the director.

18

19 SECTION 6. Arkansas Code Title 23, Chapter 89, Subchapter 5 is amended
20 to add an additional section to read as follows:

21 23-89-510. Accidents – Reporting injuries or death – Investigations.

22 (a) Any mechanical, structural, or electrical defects directly
23 affecting patron safety for which an amusement ride is closed to patron use
24 for a period of time more than three (3) hours, must be reported in writing
25 personally or by facsimile by the owner or operator to the Department of
26 Labor within twenty-four (24) hours after the closing of the amusement ride.

27 (b)(1) The operator of an amusement ride shall immediately cease to
28 operate any ride involved in a fatality or serious physical injury. The
29 owner or operator shall notify the department of such accident within four
30 (4) hours of its occurrence by telephone or facsimile. The owner or operator
31 shall file a written accident report personally or by facsimile with the
32 department within twenty-four (24) hours of the accident. Within twenty-four
33 (24) hours after receipt of such report, the department shall initiate an
34 investigation of the occurrence and an inspection of the ride. The department
35 shall perform the inspection in a manner that proceeds with all practicable
36 speed and minimizes the disruption of the amusement facility at which the

1 amusement ride is located.

2 (2) Unless authorized in writing by the department, no amusement
3 ride may be operated, moved, altered, repaired, or tampered with, except to
4 protect life, limb, and property, following an accident involving a serious
5 injury or death until the department has completed its inspection and
6 investigation.

7

8 SECTION 7. Arkansas Code Title 23, Chapter 89, Subchapter 5 is amended
9 to add an additional section to read as follows:

10 23-89-511. Amusement Ride Operators.

11 (a) Any person directly operating any amusement ride or attraction:

12 (1) Must be at least sixteen (16) years of age;

13 (2) Must be trained in the proper use and operation of the
14 device;

15 (3) Must operate only one (1) ride at a time; and

16 (4) May not operate any amusement ride or attraction while
17 intoxicated.

18 (b) For the purposes of this section, "intoxicated" means influenced
19 or affected by the ingestion of alcohol, a controlled substance, any
20 intoxicant, or any combination thereof, to such a degree that the operator's
21 reactions, motor skills, and judgment are substantially altered and the
22 operator, therefore, constitutes a clear and substantial danger of physical
23 injury or death to ride patrons.

24

25 SECTION 8. Arkansas Code Title 23, Chapter 89, Subchapter 5 is amended
26 to add an additional section to read as follows:

27 23-89-512. Prohibited bungee operations.

28 The following bungee operations are prohibited:

29 (1) A bungee operation conducted with balloons, blimps, helicopters,
30 or other aircraft;

31 (2) Sand bagging, which is the practice of holding onto any object,
32 including another person, while bungee jumping, for the purpose of exerting
33 more force on the bungee cord to stretch it further, and then releasing the
34 object during the jump causing the jumper to rebound with more force than
35 could be created by the jumper's weight alone;

36 (3) Tandem or multiple bungee jumping, except for rides that the

1 manufacturer has designed for multiple patrons; and

2 (4) Bungee jumping from any bridge, overpass, or any other structure
3 not specifically designed as an amusement ride or attraction.

4
5 SECTION 9. Arkansas Code Title 23, Chapter 89, Subchapter 5 is amended
6 to add an additional section to read as follows:

7 23-89-513. Posting ride safety rules required.

8 All requirements for rider safety within the control of the rider must
9 be prominently posted in a manner reasonably expected to provide notice to
10 the rider. Such requirements or restrictions should include any height or
11 weight restrictions, safety belt or bars or other safety restraint systems
12 requirements, prohibitions against standing before cessation of the ride or
13 attraction and prohibitions against horseplay.

14
15 SECTION 10. Arkansas Code Title 23, Chapter 89, Subchapter 5 is
16 amended to add an additional section to read as follows:

17 23-89-514. Patron safety.

18 (a) All patrons on any amusement ride or attraction subject to this
19 subchapter shall, at a minimum:

20 (1) Obey the posted safety rules and oral instructions issued by
21 the amusement ride owner or manager or such owner's employee or agent;

22 (2) Refrain from acting in any manner that may cause or
23 contribute to injuring the patron or others, including:

24 (A) Interfering with the safe operation of the amusement
25 ride;

26 (B) Not engaging any safety devices provided;

27 (C) Disconnecting or disabling a safety device except at
28 the express instruction of the operator;

29 (D) Altering or enhancing the intended speed, course or
30 direction of the amusement ride;

31 (E) Extending arms and legs beyond the carrier or seating
32 area;

33 (F) Throwing, dropping or expelling an object from or
34 toward an amusement ride; and

35 (G) Getting on or off an amusement ride or attraction
36 except at the designated time and area unless directed to do otherwise by an

1 operator due to an emergency.

2 (b) Parents or guardians of patrons under the age of eighteen (18)
3 years have a duty to ensure that the patron complies with the provisions of
4 this section.

5 (c) Any person eighteen (18) years of age, or older, who violates the
6 provisions of this section may be charged with a Class A misdemeanor.

7

8 SECTION 11. Arkansas Code Title 23, Chapter 89, Subchapter 5 is
9 amended to add an additional section to read as follows:

10 23-89-515. Nondestructive Testing.

11 (a) An owner may not operate an amusement ride for which the
12 manufacturer recommends nondestructive testing unless the owner complies with
13 the manufacturer's standards for the testing and the ride meets the
14 manufacturer's acceptance criteria.

15 (b) If manufacturer's nondestructive testing standards are unavailable
16 for an amusement ride, and the department deems it necessary, the owner shall
17 provide such standards through a registered professional engineer or
18 engineering agency or any individual qualified by training and experience to
19 compile standards based upon the ride's specifications and history and using
20 accepted engineering practices. The engineer or other qualified individual
21 shall be approved by the director and the ride must meet the criteria so
22 established.

23

24 SECTION 12. Arkansas Code Title 23, Chapter 89, Subchapter 5 is
25 amended to add an additional section to read as follows:

26 23-89-516. Records.

27 (a) The Director of the Department of Labor shall keep records and
28 statistics by year of serious injuries and fatalities resulting from
29 amusement ride accidents. Such records and statistics shall specify the year
30 of the accident, type of injury, type of ride or attraction involved and
31 cause of the accident.

32 (b) Each owner or operator shall retain on the premises or with a
33 portable amusement ride the following records:

34 (1) Proof of insurance coverage as required by this subchapter;

35 (2) The latest safety inspection report by the department and by
36 the owner or operator's insurer;

1 (3) All maintenance and repair records for a period of one (1)
2 year;

3 (4) All accident records for a period of one (1) year on
4 premises, although such records shall be maintained and subject to being made
5 available to the director for a period of three (3) years;

6 (5) A record of employee/operator training for each employee
7 authorized to operate, assemble, disassemble, transport, or conduct
8 maintenance on an amusement ride or attraction; and

9 (6) A copy of any affidavit of nondestructive testing required
10 by this subchapter.

11
12 SECTION 13. Arkansas Code Title 23, Chapter 89, Subchapter 5 is
13 amended to add an additional section to read as follows:

14 23-89-517. Disposition of funds.

15 All money received under the provisions of this subchapter shall be
16 deposited in the State Treasury to the credit of the Department of Labor
17 Special Fund.

18
19 SECTION 14. Arkansas Code Title 23, Chapter 89, Subchapter 5 is
20 amended to add an additional section to read as follows:

21 23-89-519. Amusement Ride Safety Advisory Board – Creation - Duties.

22 (a)(1) There is created an Amusement Ride Safety Advisory Board.

23 (2) The board shall be appointed by the Governor. The Director
24 of the Department of Labor or his designee shall be ex officio chairman. The
25 Amusement Ride Safety Advisory Board shall consist of six (6) additional
26 members.

27 (A) One (1) member of the board shall be the Director of
28 the Department of Parks and Tourism, or his designee;

29 (B) One (1) member of the board shall represent insurance
30 companies insuring amusement rides in Arkansas;

31 (C) One (1) member of the board shall represent owners or
32 operators of amusement rides which are portable in nature;

33 (D) One (1) member of the board shall represent owners or
34 operators of permanently placed amusement rides;

35 (E) One (1) member of the board shall represent fair
36 managers in Arkansas; and

1 (F) One (1) member of the board shall represent the
2 general public.

3 (3) The terms of office of the members, other than the Director
4 of the Department of Labor and the Director of the Department of Parks and
5 Tourism, shall be for four (4) years or until a successor is appointed.

6 (4) No member of the board shall be appointed to serve more than
7 two (2) consecutive full terms.

8 (5) The Governor shall, at the time of appointment or
9 reappointment, adjust the length of terms to insure that the terms of board
10 members are staggered so that, insofar as is possible, an equal number of
11 members shall rotate each year.

12 (b) The duties of the Amusement Ride Safety Advisory Board shall be:

13 (1) To assist the director with the formulation of rules and
14 regulations regarding the safe operation of amusement rides; and

15 (2) To give the department such counsel and advice as will aid
16 it in the proper enforcement and administration of the provisions of this
17 subchapter.

18 (3) The members of the Amusement Ride Safety Advisory Board,
19 except the ex-officio chairman and the Director of the Department of Parks
20 and Tourism, may receive expense reimbursement and stipends in accordance
21 with §§ 25-16-901 through 25-16-908.

22
23 SECTION 15. Arkansas Code 20-27-101 is hereby repealed.

24 ~~20-27-101. Inspection.~~

25 ~~(a) Twice per calendar year, the Department of Labor shall inspect all~~
26 ~~permanently placed operational amusement rides located in this state being~~
27 ~~operated for profit or charity.~~

28 ~~(b)(1) The department shall also inspect all operational amusement~~
29 ~~rides which are portable in nature every time they are moved to a new~~
30 ~~location in Arkansas and before they are permitted to commence operation in~~
31 ~~this state.~~

32 ~~(2) In lieu of actual inspection by the department, the~~
33 ~~department is authorized to accept a safety inspection report made by an~~
34 ~~authorized insurance carrier providing coverage for the amusement ride~~
35 ~~provided that the inspection has been made at the new location and before~~
36 ~~commencement of operation.~~

1 ~~(3) No portable amusement ride shall commence operation in this~~
2 ~~state before approval from the department has first been obtained.~~

3
4 SECTION 16. Arkansas Code 20-27-102 is hereby repealed.

5 ~~20-27-102. Unsafe rides.~~

6 ~~If the Director of the Department of Labor or his designee finds that~~
7 ~~any amusement ride is in a dangerous condition rendering it unsafe for public~~
8 ~~use, the ride shall be deemed inoperable by the director. The amusement ride~~
9 ~~operator shall make any corrections the director deems necessary before the~~
10 ~~amusement ride shall be deemed operational in Arkansas.~~

11
12 SECTION 17. Arkansas Code 20-27-103 is hereby repealed.

13 ~~20-27-103. Rules, regulations, and fees.~~

14 ~~The Department of Labor shall establish rules and regulations,~~
15 ~~including fees to defray the cost of inspections, to carry out the purpose of~~
16 ~~this subchapter.~~

17
18 SECTION 18. Arkansas Code 20-27-104 is hereby repealed.

19 ~~20-27-104. Nonliability of state.~~

20 ~~The State of Arkansas shall not be liable for any damages occurring as~~
21 ~~a result of the implementation of this subchapter.~~

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24 */s/ Critcher*
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