CHAPTER 18

South Carolina Amusement Rides Safety Code

ARTICLE 1

General Provisions

Editor’s Note

2005 Act No. 30, Section 3, provides as follows:

“Sections 41‑18‑10 through 41‑18‑150 are designated as Article 1, Chapter 18, Title 41 of the 1976 Code and entitled “General Provisions”.”

**SECTION 41‑18‑10.** Short title.

 This chapter may be cited as the “South Carolina Amusement Rides Safety Code”.

HISTORY: 1985 Act No. 103, Section 2; 1998 Act No. 283, Section 1, eff upon approval (became law without the Governor’s signature on April 8, 1998).

Effect of Amendment

The 1998 amendment deleted “is known and” preceding “may be cited”.

CROSS REFERENCES

Amusement Rides Safety Code regulations, see S.C. Code of Regulations R. 71‑4000 et seq.

Department of Labor incorporated into Department of Labor, Licensing, and Regulation, see Section 1‑30‑65.

LIBRARY REFERENCES

86 C.J.S., Theaters and Shows Section 22.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Labor Relations Section 19, Powers.

**SECTION 41‑18‑20.** Legislative intent.

 (A) The purpose of this chapter is to guard against personal injuries in the assembly, disassembly, and use of amusement devices at carnivals, fairs, and amusement parks to persons employed at or attending carnivals, fairs, and amusement parks and, in the event of a personal injury, to ensure to the injured party the possibility of financial recovery as against the owner of the carnival, fair, or amusement park where the injury occurred.

 (B) It is the intent of this chapter that amusement devices must be designed, constructed, assembled or disassembled, maintained, and operated so as to prevent injuries.

HISTORY: 1985 Act No. 103, Section 2; 1998 Act No. 283, Section 1, eff upon approval (became law without the Governor’s signature on April 8, 1998).

Effect of Amendment

The 1998 amendment made nonsubstantive changes.

LIBRARY REFERENCES

86 C.J.S., Theaters and Shows Section 22.

RESEARCH REFERENCES

Encyclopedias

25 Am. Jur. Proof of Facts 2d 613, Dangerous or Defective Amusement Ride.

NOTES OF DECISIONS

In general 1

1. In general

Amusement park owed a duty of care to rider, who was injured while riding go‑carts at park; state had adopted the South Carolina Amusement Rides Safety Code, the purpose of the Code was to prevent personal injuries that result from the use of amusement devices, and rider was in the class of persons the Code was designed to protect since he was injured while attending amusement park. Burnett v. Family Kingdom, Inc. (S.C.App. 2010) 387 S.C. 183, 691 S.E.2d 170. Public Amusement And Entertainment 92

Amusement Rides Safety Code created “special duty” on part of state Department of Labor, Licensing, and Regulation, and thus, survivors and estates of bungee jumpers who were killed when steel cage in which they were riding fell had private cause of action against Department for failing to investigate bungee device or to suspend its license after receiving troubling reports; essential purpose of Code was to protect against harm caused by poorly designed, constructed, or maintained amusement rides, Code directly imposed on Department duty to guard against or not cause harm to amusement park visitors and workers, riders and workers at specific hazardous amusement ride were readily identifiable before fact of injury, victims were within protected class, Department officials testified that they would have shut down device if they had known about substantial modifications made by its owner, and Department had sufficient authority to act in circumstances presented. Steinke v. South Carolina Dept. of Labor, Licensing and Regulation (S.C. 1999) 336 S.C. 373, 520 S.E.2d 142, rehearing denied. States 112.2(2)

Amusement Rides Safety Code implicitly imposes upon Department of Labor, Licensing, and Regulation affirmative duty to investigate promptly after receiving credible reports of suspected hazards. Steinke v. South Carolina Dept. of Labor, Licensing and Regulation (S.C. 1999) 336 S.C. 373, 520 S.E.2d 142, rehearing denied. States 112.2(2)

**SECTION 41‑18‑30.** Applicability; exceptions.

 (A) This chapter applies to amusement devices at carnivals, fairs, and amusement parks where an admission or fee is customarily or usually charged located within the State or at other places open to the public and to the managers of these devices, to the persons employed in connection with these devices, and to their employees.

 (B) This chapter does not apply to single passenger, coin‑operated, manually, mechanically, or electrically operated rides, except where admission is charged for the use of the equipment, and this chapter may not be construed so as to limit the right of a person to conduct any hotel, restaurant, or eating place at an amusement park.

 (C) This chapter does not apply to air‑supported structures.

HISTORY: 1985 Act No. 103, Section 2; 1993 Act No. 144, Section 1, eff June 14, 1993; 1998 Act No. 283, Section 1, eff upon approval (became law without the Governor’s signature on April 8, 1998).

Effect of Amendment

The 1993 amendment, in subsection 1, added “or at other places open to the public”.

The 1998 amendment added subsection (C), exempting air supported structures; and made nonsubstantive changes throughout the section.

LIBRARY REFERENCES

86 C.J.S., Theaters and Shows Section 22.

**SECTION 41‑18‑40.** Definitions.

 As used in this chapter, except as otherwise expressly provided:

 (1) “Amusement device” means any mechanical device or combination of devices which carries or conveys passengers on, along, around, over, or through a fixed or restricted course or within a defined area for the purpose of giving its passengers amusement, pleasure, or excitement.

 (2) “Amusement park” means a tract or area used principally as a permanent location for amusement devices or structures.

 (3) “Director” means the Director of the South Carolina Department of Labor, Licensing and Regulation or the director’s designee or representative.

 (4) “Catapulting amusement ride” means an amusement ride whereby a person, or persons, riding in a safety car, or other suitable safety device, is attached to wire ropes or cables that may be attached to springs or other devices similar in design or use which are engineered to simulate bungee catapulting or reverse bungee jumping as defined in Section 52‑19‑50(5) whereby a person or passenger is released from a fixed position, thus catapulting or otherwise launching the jumper or passenger into the air or toward the ground.

 (5) “Carnival” means an itinerant enterprise consisting principally of temporary amusement devices or mechanical rides operated to provide entertainment or amusement to the public.

 (6) “Fair” means an enterprise principally devoted to the exhibition of the products of agriculture or industry and at which amusement devices or temporary structures are provided for use by the public.

 (7) “Owner” means a person, corporation, partnership, or association who owns an amusement device or, in the event that the amusement device is leased, the lessee.

 (8) “Permanent device” means a device which is used, or intended to be used, as an amusement device that is erected to remain a lasting part of the premises.

 (9) “Temporary device” means a device which is used as an amusement device that is regularly relocated with or without disassembly.

 (10) “Serious injury” means an injury that results in death or requires immediate in‑patient hospitalization. A fracture or disfigurement is considered a serious injury even if no hospitalization is required. Notwithstanding the definition of serious injury, the owner or lessee of any amusement device under this section must maintain permanent records of all injuries sustained by participants utilizing the amusement. These records shall be open for inspection by any authorized representative of the department.

 (11) “Safety coordinator” means a person suited by training or experience and designated by the owner or operator of an amusement park, fair, or carnival as being in charge of the safety of all amusement devices located at the park, fair, or carnival.

 (12) “Department” means the South Carolina Department of Labor, Licensing and Regulation.

 (13) “Special inspector” means an inspector licensed by the director and not employed by the department.

 (14) “Catastrophic accident” means an incident resulting in fatality or three or more injuries resulting in hospitalization.

HISTORY: 1985 Act No. 103, Section 2; 1986 Act No. 514, Section 1, eff June 12, 1986; 1993 Act No. 144, Section 2, eff June 14, 1993; 1993 Act No. 181, Section 977, eff February 1, 1994; 1998 Act No. 283, Section 1, eff upon approval (became law without the Governor’s signature on April 8, 1998); 1999 Act No. 90, Section 1, eff June 11, 1999; 2005 Act No. 60, Section 1, eff upon approval (became law without the Governor’s signature on May 18, 2005).

Editor’s Note

Pursuant to Section 41‑3‑610, effective February 1, 1994, wherever the term Department of Labor appears or is used, it shall be deemed to mean the Division of Labor, that is, a division of the Department of Labor, Licensing, and Regulation.

Code Commissioner’s Note

The definition of “catapulting amusement ride”, as added by 2005 Act No. 60, Section 1, was redesignated to this section from Section 41‑18‑10 at the direction of the Code Commissioner.

Effect of Amendment

The 1986 amendment added the provision defining “special inspector” (item (12)).

The first 1993 amendment deleted “the following terms have the meanings indicated” from the introductory statement; in (8) “Temporary device” deleted “from time to time” following “relocated”; in (9) “serious injury” deleted “results in death or” following “injury that” and added “minor” preceding “burns”; and added (13) “catastrophic accident”.

The second 1993 amendment in subsections (3) and (11), substituted “Division of Labor” for “Department of Labor”.

The 1998 amendment, throughout subsections (3), (11), and (12), substituted “director” for “commissioner” and reflected the department name change of the Division of Labor to the Department of Labor, Licensing and Regulation.

The 1999 amendment rewrote subsection (9).

The 2005 amendment added item (4) defining “catapulting amusement ride” and redesignated items (4) to (13) as items (5) to (14).

LIBRARY REFERENCES

86 C.J.S., Theaters and Shows Section 22.

**SECTION 41‑18‑50.** Permit required; transferability of permits.

 No amusement device may be operated in the State without a permit issued by the director. A permit is not transferable and if a permit holder voluntarily discontinues operation of the amusement device, all rights secured under the permit are terminated.

HISTORY: 1985 Act No. 103, Section 2; 1998 Act No. 283, Section 1, eff upon approval (became law without the Governor’s signature on April 8, 1998).

Effect of Amendment

The 1998 amendment rewrote this section to substitute “director” for “commissioner”, and made nonsubstantive changes.

CROSS REFERENCES

Civil penalties, see Section 41‑18‑150.

Inspection as requirement for issuance of permit, see Section 41‑18‑70.

Written application for permit and its revocation, see Section 41‑18‑60.

LIBRARY REFERENCES

86 C.J.S., Theaters and Shows Section 22.

**SECTION 41‑18‑60.** Application for permit; duration of permit; revocation.

 (A) Before commencement of the operation of a permanent or temporary device, the owner or lessee shall make written application to the director for a permit to operate. The permit is valid for a period of up to one year expiring on December thirty‑first of the year issued.

 (B) No temporary device may be used at any time or location unless prior notice of intent to use the device has been given to the director. Notice of planned schedules must:

 (1) be in writing;

 (2) identify the temporary device;

 (3) state the intended dates and locations of use; and

 (4) be mailed to the director at least seven days before the first intended date of use.

 However, the director may waive the requirements enumerated in this subsection.

 (C) A permit to operate must be issued to the owner or lessee of an amusement device when:

 (1) written application has been made to the director;

 (2) the amusement device has passed all required inspections;

 (3) the liability insurance required by Section 41‑18‑90 has been met in the amount prescribed.

 (D) The director may revoke a permit issued pursuant to this chapter if it is determined that an amusement device is:

 (1) being operated without the inspections required by Sections 41‑18‑70 and 41‑18‑80;

 (2) being operated without the insurance required by Section 41‑18‑90;

 (3) being operated with a mechanical, electrical, structural, design, or other defect which presents an excessive risk of serious injury to passengers, bystanders, operators, or attendants;

 (4) being operated without the required documentation or paperwork; or

 (5) being operated in a manner contrary to the operating fact sheets.

 (E) Any other violation of this chapter may result in a revocation, if written notice of noncompliance is served upon the owner specifying a violation of this chapter and directing the owner to correct the violations within the period specified by the director. If the owner and the department fail to agree that the violations referred to in this section have been corrected, the department shall give notice of and provide a hearing for the owner to determine whether compliance has been met. The Administrative Procedures Act governs contested cases of this nature and any other contested cases arising under this chapter.

 (F) Nothing in this chapter prevents an owner whose permit to operate an amusement device has been revoked pursuant to this section from reapplying for a permit in accordance with this chapter, except as otherwise specifically provided in this chapter. Upon application to have a revoked permit reinstated under this section, the department shall inspect the amusement ride in question as promptly as practicable, but in no case more than seventy‑two hours after the submission of the application.

HISTORY: 1985 Act No. 103, Section 2; 1993 Act No. 144, Section 3, eff June 14, 1993; 1998 Act No. 283, Section 1, eff upon approval (became law without the Governor’s signature on April 8, 1998).

Effect of Amendment

The 1993 amendment, in subsection 1 replaced “one year” with “up to one year expiring on December thirty‑first of the year issued”; in subsection 2 changed 15 days to 7 days; in subsection 4, paragraph (c) added “electrical”, “or other” preceding “defect”, and “bystanders, operators, or attendants” and added paragraphs (d) and (e); in subsection 5, in the first sentence substituted “the period specified by the commissioner” for “thirty days of receipt of the notice”, and after “1977” added “as amended”; and in subsection 6 replaced “practical” with “practicable”.

The 1998 amendment substituted “director” for “commissioner” throughout the section, and made nonsubstantive changes.

CROSS REFERENCES

Administrative procedures act, see Sections 1‑23‑310.

Civil penalties, see Section 41‑18‑150.

Inspection as requirement for issuance of permit, see Section 41‑18‑70.

Inspection procedures, see Section 41‑18‑80.

Permit requirement, see Section 41‑18‑50.

LIBRARY REFERENCES

86 C.J.S., Theaters and Shows Section 22.

RESEARCH REFERENCES

Encyclopedias

25 Am. Jur. Proof of Facts 2d 613, Dangerous or Defective Amusement Ride.

NOTES OF DECISIONS

In general 1

1. In general

Amusement Rides Safety Code created “special duty” on part of state Department of Labor, Licensing, and Regulation, and thus, survivors and estates of bungee jumpers who were killed when steel cage in which they were riding fell had private cause of action against Department for failing to investigate bungee device or to suspend its license after receiving troubling reports; essential purpose of Code was to protect against harm caused by poorly designed, constructed, or maintained amusement rides, Code directly imposed on Department duty to guard against or not cause harm to amusement park visitors and workers, riders and workers at specific hazardous amusement ride were readily identifiable before fact of injury, victims were within protected class, Department officials testified that they would have shut down device if they had known about substantial modifications made by its owner, and Department had sufficient authority to act in circumstances presented. Steinke v. South Carolina Dept. of Labor, Licensing and Regulation (S.C. 1999) 336 S.C. 373, 520 S.E.2d 142, rehearing denied. States 112.2(2)

Amusement Rides Safety Code implicitly imposes upon Department of Labor, Licensing, and Regulation affirmative duty to investigate promptly after receiving credible reports of suspected hazards. Steinke v. South Carolina Dept. of Labor, Licensing and Regulation (S.C. 1999) 336 S.C. 373, 520 S.E.2d 142, rehearing denied. States 112.2(2)

**SECTION 41‑18‑70.** Inspection requirement.

 Before a permit may be issued as provided in Sections 41‑18‑50 and 41‑18‑60, an inspection of the amusement device must be made in compliance with the procedures set by the director. The inspection must have been conducted within one month before the permit application, unless the period is extended by operation of Section 41‑18‑80(E).

HISTORY: 1985 Act No. 103, Section 2; 1993 Act No. 144, Section 4, eff June 14, 1993; 1998 Act No. 283, Section 1, eff upon approval (became law without the Governor’s signature on April 8, 1998).

Effect of Amendment

The 1993 amendment changed the period within which the inspection must have been conducted, from within one year prior to the application to within one month prior to it.

The 1998 amendment substituted “director” for “commissioner”, and made nonsubstantive changes.

CROSS REFERENCES

Civil penalties, see Section 41‑18‑150.

Inspection procedures, see Section 41‑18‑80.

Written application for permit and its revocation, see Section 41‑18‑60.

LIBRARY REFERENCES

86 C.J.S., Theaters and Shows Section 22.

**SECTION 41‑18‑80.** Inspection procedures.

 (A) In the case of a permanent device, the amusement device must be inspected by the director or special inspector. Thereafter, as a requirement for the issuance of each subsequent permit, the amusement device must be inspected at least annually by the director or by a special inspector. The inspection shall at minimum comply with the requirements of the director. An affidavit of the annual inspection must be filed with the director.

 (B) In the case of a temporary device, before first operation in the State each year, the amusement device must be inspected by the director or special inspector for the permit to be issued. Thereafter, the amusement device must be inspected at least annually by the director or a special inspector. The inspection must at minimum comply with the requirements of the director. An affidavit of the annual inspection must be filed with the director.

 (C) In the case of an amusement device which is substantially rebuilt or substantially modified so as to change the structure, mechanism, or capacity of the device, the owner or lessee shall give written notice to the director who shall cause the device to be inspected before the time in which it is put into operation and who shall cause any current permit to be updated so as to include any modifications made to the device.

 (D) In the event an operator is unable to secure an inspection within one year from the date of the previous inspection, the previous inspection is considered valid for purposes of this chapter for a period of thirty additional days, if the operator made an inspection request to any of those individuals qualified to make the inspection at least sixty days before the permit expiration date.

 (E) Upon proper presentation of credentials, the director or his inspectors may enter unannounced and inspect amusement devices at reasonable times and in a reasonable manner and have the right to question any owner, manager, or agent of the owner, to inspect, investigate, photograph, and sample all pertinent places, areas, and devices, and to examine and reproduce all pertinent documents and records for the purpose of enforcing the provisions of this chapter. No fee may be charged for these unannounced inspections.

 (F) No amusement device which fails to pass an inspection may be operated for public use until it has passed a subsequent inspection.

 (G) Each sponsor of a fair or carnival and the owner of the land or their designees, upon which the fair or carnival is located, shall make a visual inspection of each amusement device at least once each week during the period the fair or carnival is operating. The director shall provide a checklist for this inspection. If an unsafe amusement device or condition is discovered, it must be immediately reported to the director.

 (H) A special inspector shall have:

 (1) at least five years’ experience in amusement device maintenance and safety, and completion of approved courses in materials inspection and testing and in fasteners, or a four‑year college degree in engineering or architecture with a minimum of twelve semester hours of course work in the area of mechanics and strength of materials and

 (2) evidence of successful completion of an approved Rides Safety Inspection Course within the previous two calendar years.

HISTORY: 1985 Act No. 103, Section 2; 1986 Act No. 514, Section 2, eff June 12, 1986; 1993 Act No. 144, Section 5, eff June 14, 1993; 1998 Act No. 283, Section 1, eff upon approval (became law without the Governor’s signature on April 8, 1998).

Effect of Amendment

The 1986 amendment made grammatical changes; revised subsections 1 and 2 so as to allow inspections to be performed by the commissioner’s designee or a special inspector, as well as by the commissioner, and so as to no longer require annual inspections by an approved “licensed architect, professional engineer, qualified inspector of an insurance underwriter, or other qualified inspector”; revised subsection 1 by deleting a provision requiring the initial inspection to be made “at the time of application for the initial permit”; revised subsection 5 by substituting “special inspector” for “licensed architect, professional engineer, qualified inspector of an insurance underwriter, or other qualified inspector, each of whom must be approved by the commissioner,”; substantially rewrote subsection 8; and added subsection 9.

The 1993 amendment, in subsections (1), (2) and (5) deleted references to inspector’s designee or agent; in subsection (2) substituted “before first operation in the state each year” for “upon first entry into the state”; deleted former subsection (3) pertaining to visual inspections of temporary devices, and renumbered the remaining subsections; and in subsection (4), formerly (5), deleted “by a special inspector” following “secure an inspection” and substituted “permit expiration date” for “inspection anniversary date”.

The 1998 amendment substituted “director” for “commissioner” throughout the section, and made nonsubstantive changes.

CROSS REFERENCES

Civil penalties, see Section 41‑18‑150.

Inspection as requirement for issuance of permit, see Section 41‑18‑70.

Written application for permit and its revocation, see Section 41‑18‑60.

LIBRARY REFERENCES

86 C.J.S., Theaters and Shows Section 22.

RESEARCH REFERENCES

Encyclopedias

25 Am. Jur. Proof of Facts 2d 613, Dangerous or Defective Amusement Ride.

NOTES OF DECISIONS

In general 1

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Amusement Rides Safety Code created “special duty” on part of state Department of Labor, Licensing, and Regulation, and thus, survivors and estates of bungee jumpers who were killed when steel cage in which they were riding fell had private cause of action against Department for failing to investigate bungee device or to suspend its license after receiving troubling reports; essential purpose of Code was to protect against harm caused by poorly designed, constructed, or maintained amusement rides, Code directly imposed on Department duty to guard against or not cause harm to amusement park visitors and workers, riders and workers at specific hazardous amusement ride were readily identifiable before fact of injury, victims were within protected class, Department officials testified that they would have shut down device if they had known about substantial modifications made by its owner, and Department had sufficient authority to act in circumstances presented. Steinke v. South Carolina Dept. of Labor, Licensing and Regulation (S.C. 1999) 336 S.C. 373, 520 S.E.2d 142, rehearing denied. States 112.2(2)

**SECTION 41‑18‑90.** Liability insurance requirement.

 Before the Labor Division of the Department of Labor, Licensing and Regulation may issue a permit to the owner or lessee of an amusement device, the owner or lessee of the device shall furnish the Labor Division with proof that the owner or lessee has purchased insurance from an acceptable insurer in an amount not less than five hundred thousand dollars for each occurrence against liability for injury to persons arising out of the use of the amusement device and that the policy of liability is in effect. The amount of the deductible provision in the policy of insurance is dependent upon the owner’s or the lessee’s proof of financial responsibility and must be established by the Labor Division on a case‑by‑case basis. For purposes of this section, an acceptable insurer for a “permanent device” is an insurer which is either licensed by the Director of the Department of Insurance in this State or approved by the Department of Insurance as a nonadmitted surplus lines carrier for risks located in this State. For a “temporary device” an insurer shall meet either of these requirements or shall meet minimum financial requirements for admission as a licensed company in South Carolina and must be licensed in the “temporary device’s” owner’s or lessee’s home state or must be an approved nonadmitted surplus lines carrier for risks located in that home state. Each policy, by its original terms or an endorsement, shall obligate the insurer that it will not cancel, suspend, or nonrenew the policy without thirty days’ written notice of the proposed cancellation, suspension, or nonrenewal and a complete report of the reasons for the cancellation, suspension, or nonrenewal being given to the Labor Division. In the event the liability insurance is canceled, suspended, or nonrenewed, the insurer shall give immediate notice to the Labor Division. This section may not be construed to expand any of the rights granted the employees of the owners, operators, or lessees under the workers’ compensation laws of this State.

HISTORY: 1985 Act No. 103, Section 2; 1986 Act No. 514, Section 3A, eff June 12, 1986; 1993 Act No. 181, Section 981, eff February 1, 1994; 1998 Act No. 283, Section 1, eff upon approval (became law without the Governor’s signature on April 8, 1998).

Effect of Amendment

The 1986 amendment substituted “five hundred thousand dollars for each occurrence” for “one million dollars per occurrence”.

The 1993 amendment substituted “Labor Division of the Department of Labor, Licensing, Regulation” and “Labor Division” for “commissioner”, and “Director of the Department of Insurance” for “Chief Insurance Commissioner”.

The 1998 amendment made a nonsubstantive change.

CROSS REFERENCES

Civil penalties, see Section 41‑18‑150.

Written application for permit and its revocation, see Section 41‑18‑60.

LIBRARY REFERENCES

86 C.J.S., Theaters and Shows Section 22.

**SECTION 41‑18‑100.** Discrimination; duties of owner or lessee in event of catastrophic accident or accident resulting in serious injury; inspection and correction of defects.

 (A) The owner or amusement ride operator may deny any person entrance to the amusement ride based on the person’s size, weight, or physical condition if the owner or amusement ride operator believes the entry may jeopardize the safety of the person desiring entry, riders, or other persons. Denial may not be based on color, race, sex, religion, or national origin.

 (B) The owner or lessee of any amusement device which, during the course of its operation, is involved in an accident which results in a serious injury shall report the injury to the owner’s or lessee’s insurer.

 (C) The owner or lessee of any amusement device which, during the course of its operation, is involved in an accident which results in a serious injury shall report the injury to the director immediately and in no case later than the close of business of the director’s next business day. Any owner or lessee who becomes aware at a later date that a serious injury had occurred shall report it immediately and in no case later than the end of the next business day.

 (D) When a catastrophic accident occurs involving the operation of an amusement device, the owner or lessee shall immediately shut down the device from further use. The device may not resume operation until the safety coordinator determines that the catastrophic accident was not caused by a mechanical or structural defect in the amusement device.

 (E) If the safety coordinator determines that a catastrophic accident was caused by a mechanical failure or structural defect, the device must remain shut down until repairs are completed and the device is considered operational by a licensed architect, professional engineer, qualified inspector of an insurance underwriter, or other qualified inspector, each of whom must be approved by the director. An affidavit of the inspection and correction of defect must be filed with the director.

HISTORY: 1985 Act No. 103, Section 2; 1993 Act No. 144, Section 6, eff June 14, 1993; 1998 Act No. 283, Section 1, eff upon approval (became law without the Governor’s signature on April 8, 1998).

Effect of Amendment

The 1993 amendment, in subsection 3, changed “prior to” to “immediately and in no case later than” and added the second sentence; in subsections 4 and 5 changed “serious injury” to “catastrophic accident”; and in subsection 5 added “failure” following “mechanical”.

The 1998 amendment substituted “director” for “commissioner” throughout the section, and made nonsubstantive changes.

CROSS REFERENCES

Inspection requirement, see Sections 41‑18‑70, 41‑18‑80.

Permit requirement, see Sections 41‑18‑50, 41‑18‑60.

Required insurance coverage, see Section 41‑18‑90.

LIBRARY REFERENCES

86 C.J.S., Theaters and Shows Section 22.

**SECTION 41‑18‑110.** Notice to owners and operators of amusement devices.

 Upon request, the director shall furnish to all owners, lessees, and operators of amusement devices notice of all rights and obligations under the provisions of this chapter upon receipt of permit applications.

HISTORY: 1985 Act No. 103, Section 2; 1993 Act No. 144, Section 7, eff June 14, 1993; 1998 Act No. 283, Section 1, eff upon approval (became law without the Governor’s signature on April 8, 1998).

Effect of Amendment

The 1993 amendment added “Upon request,”.

The 1998 amendment substituted “director” for “commissioner”.

LIBRARY REFERENCES

86 C.J.S., Theaters and Shows Section 22.

**SECTION 41‑18‑120.** Promulgation of regulations; fees.

 The director may promulgate regulations consistent with this chapter guarding against personal injuries in the assembly, disassembly, and use of amusement devices at carnivals, fairs, and amusement parks to persons employed at or to persons attending the carnivals, fairs, and amusement parks and regarding enforcement of any other provision of this chapter. The director shall promulgate regulations to charge and collect reasonable fees for permits and for inspections and any other activity under this chapter as considered necessary by the director for the proper enforcement of this chapter. Fees may be set by regulation not more than once each year.

HISTORY: 1985 Act No. 103, Section 2; 1986 Act No. 514, Section 3, eff June 12, 1986; 1998 Act No. 283, Section 1, eff upon approval (became law without the Governor’s signature on April 8, 1998).

Effect of Amendment

The 1986 amendment substituted “reasonable fees” for “fees”, in the second sentence, and deleted provisions requiring fees to be based upon the costs of administering the chapter and limiting initial fees to fifty dollars per amusement device.

The 1998 amendment substituted “director” for “commissioner” throughout the section, and made nonsubstantive changes.

CROSS REFERENCES

Amusement Rides Safety Code regulations, see S.C. Code of Regulations R. 71‑4000 et seq.

LIBRARY REFERENCES

86 C.J.S., Theaters and Shows Section 22.

**SECTION 41‑18‑130.** Duties of director.

 The director is charged with the affirmative duty of administering and enforcing this chapter.

HISTORY: 1985 Act No. 103, Section 2; 1998 Act No. 283, Section 1, eff upon approval (became law without the Governor’s signature on April 8, 1998).

Effect of Amendment

The 1998 amendment substituted “director” for “commissioner”, and made a nonsubstantive change.

LIBRARY REFERENCES

86 C.J.S., Theaters and Shows Section 22.

RESEARCH REFERENCES

Encyclopedias

25 Am. Jur. Proof of Facts 2d 613, Dangerous or Defective Amusement Ride.

NOTES OF DECISIONS

In general 1

1. In general

Amusement Rides Safety Code created “special duty” on part of state Department of Labor, Licensing, and Regulation, and thus, survivors and estates of bungee jumpers who were killed when steel cage in which they were riding fell had private cause of action against Department for failing to investigate bungee device or to suspend its license after receiving troubling reports; essential purpose of Code was to protect against harm caused by poorly designed, constructed, or maintained amusement rides, Code directly imposed on Department duty to guard against or not cause harm to amusement park visitors and workers, riders and workers at specific hazardous amusement ride were readily identifiable before fact of injury, victims were within protected class, Department officials testified that they would have shut down device if they had known about substantial modifications made by its owner, and Department had sufficient authority to act in circumstances presented. Steinke v. South Carolina Dept. of Labor, Licensing and Regulation (S.C. 1999) 336 S.C. 373, 520 S.E.2d 142, rehearing denied. States 112.2(2)

Amusement Rides Safety Code implicitly imposes upon Department of Labor, Licensing, and Regulation affirmative duty to investigate promptly after receiving credible reports of suspected hazards. Steinke v. South Carolina Dept. of Labor, Licensing and Regulation (S.C. 1999) 336 S.C. 373, 520 S.E.2d 142, rehearing denied. States 112.2(2)

**SECTION 41‑18‑140.** Pre‑emption of local regulations.

 No political subdivision may make or maintain any ordinance, bylaw, or resolution providing for any of the matters covered under and regulated by this chapter, and an ordinance, bylaw, or resolution relating to a matter covered under and regulated by this chapter is void.

HISTORY: 1985 Act No. 103, Section 2; 1998 Act No. 283, Section 1, eff upon approval (became law without the Governor’s signature on April 8, 1998).

Effect of Amendment

The 1998 amendment made nonsubstantive changes.

LIBRARY REFERENCES

86 C.J.S., Theaters and Shows Section 22.

**SECTION 41‑18‑150.** Civil penalties.

 (A) A person is subject to a civil penalty not to exceed two thousand dollars per device for each day of noncompliance with this subsection if the person knowingly and wilfully operates an amusement device without:

 (1) the permit required by Sections 41‑18‑50 and 41‑18‑60;

 (2) the inspections required by Sections 41‑18‑70 and 41‑18‑80;

 (3) the insurance required by Section 41‑18‑90; or

 (4) complying with any other provision of this chapter or regulation promulgated under this chapter.

 (B) A person is subject to a civil penalty not to exceed two thousand dollars per device for each day of noncompliance with this subsection if the person operates an amusement device without:

 (1) the permit required by Sections 41‑18‑50 and 41‑18‑60;

 (2) the inspections required by Sections 41‑18‑70 and 41‑18‑80;

 (3) the insurance required by Section 41‑18‑90; or

 (4) complying with any other provision of this chapter or regulation promulgated under this chapter.

 (C) The director may assess the penalties under this section and, in assessing penalties under subsection (A), shall give due consideration to the appropriateness of the penalty with respect to the size of the owner’s or lessee’s business, the good faith of the owner or lessee, and the owner’s or lessee’s history of previous violation.

 (D) Revenue derived under this chapter must be remitted to the State Treasurer and deposited in the general fund.

HISTORY: 1985 Act No. 103, Section 2, eff January 1, 1986; 1993 Act No. 144, Section 8, eff June 14, 1993; 1998 Act No. 283, Section 1, eff upon approval (became law without the Governor’s signature on April 8, 1998).

Effect of Amendment

The 1993 amendment, in the opening paragraph, deleted “any of the following”; in both subsections 1 and 2, rewrote paragraph (c), deleting reference to a civil penalty not to exceed two thousand dollars, and added paragraph (d).

The 1998 amendment rewrote this section.

LIBRARY REFERENCES

86 C.J.S., Theaters and Shows Section 22.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Labor Relations Section 19, Powers.

**SECTION 41‑18‑160.** Catapulting amusement ride permit requirements.

 (A) A catapulting amusement ride must meet the following requirements before the Department of Labor, Licensing and Regulation may issue a permit:

 (1) the ride must have been in operation in another state or country for more than five years in order to compile a safety record that must be reviewed by the department;

 (2) the ride must have an exemplary safety record in the discretion of the department;

 (3) the ride must have cables or wire ropes attached to the safety car in at least four places;

 (4) the ride may not incorporate or use bungee cords anywhere within the design of the ride; and

 (5) at no time may a safety car or other suitable safety device be attached directly to a spring which is stretched or elongated in the manner of a bungee cord from the top of a tower or fixed position above the safety car or other suitable device.

 (B) The department may deny a permit for a catapulting amusement ride if one or more of the requirements in subsection (A) are not satisfied.”

HISTORY: 2005 Act No. 60, Section 2, eff upon approval (became law without the Governor’s signature on May 18, 2005).

**SECTION 41‑18‑170.** Miniature train amusement ride requirements.

 A miniature train amusement ride must satisfy the following requirements before the Department of Labor, Licensing and Regulation may issue a permit or renewal permit:

 (1) the ride must have a properly operating speedometer;

 (2) the ride must have a device that allows the speed of the train to be regulated and the speed of the train must be set so as to only operate at or below the maximum speed recommended by the manufacturer;

 (3) all drivers operating the ride must be trained to operate the ride in accordance with the manufacturer’s operation recommendations; a training record for each driver must be maintained by the owner or operator of the ride as long as the driver is employed by or operates the train on behalf of the owner or operator; and each driver must be tested by the department before the driver is authorized to operate the train; a driver employed to operate the train, or who will operate the train on behalf of the owner or operator, subsequent to the department issuing the permit or renewal permit does not affect the validity of the permit, so long as the driver does not operate the train until the driver has been tested by the department; and

 (4) the ride must be inspected mechanically, including, but not limited to, a speed test of the train to ensure that the train is operating in accordance with the requirements of item (2), and in accordance with this chapter or regulations promulgated pursuant to this chapter, but in no case less than an annual inspection.

HISTORY: 2012 Act No. 129, Section 2, eff March 13, 2012.

Editor’s Note

2012 Act No. 129, Section 1, provides as follows:

“This act may be cited as ‘Benji’s Law’.”

ARTICLE 3

Rider Safety

**SECTION 41‑18‑300.** Citation of article.

 This article may be cited as the “South Carolina Rider Safety Act”.

HISTORY: 2005 Act No. 30, Section 1, eff January 1, 2006.

**SECTION 41‑18‑310.** Definitions.

 As used in this article:

 (1) “Parent or guardian” means a parent, custodian, or guardian responsible for the control, safety, training, or education of a minor or a person who is disabled or incompetent.

 (2) “Rider of a carnival or amusement device” or “ rider” means a person who is:

 (a) waiting in the immediate vicinity to get on a carnival or amusement device;

 (b) getting on a carnival or amusement device;

 (c) using a carnival or amusement device;

 (d) getting off a carnival or amusement device; or

 (e) leaving a carnival or amusement device and who is still in the immediate vicinity of the carnival or amusement device.

 “Rider” does not include employees or agents of the owner of a carnival or amusement device while engaged in the duties of their employment.

 (3) “Sign” means a symbol or language reasonably calculated to communicate information to riders or riders’ parents or guardians including, but not limited to, placards, prerecorded messages, live public address, stickers, pictures, pictograms, guidebooks, brochures, video, verbal information, and visual signals. Lettering on signs used for this purpose must be at least two inches in height.

HISTORY: 2005 Act No. 30, Section 1, eff January 1, 2006.

**SECTION 41‑18‑320.** Compliance with safety rules; reports of injuries.

 (A) A rider of a carnival or amusement device shall at a minimum:

 (1) obey the posted rules and warnings and instructions for a carnival or amusement device issued by the owner of the carnival or amusement device or the owner’s employee or agent; and

 (2) refrain from acting in any manner that may cause or contribute to injuring the rider of a carnival or amusement device, or others, including:

 (a) exceeding the limits of the rider’s ability;

 (b) interfering with safe operation of the carnival or amusement device;

 (c) not engaging a safety mechanism provided on a carnival or amusement device;

 (d) disconnecting or disabling a carnival or amusement safety device, except at the express instruction of the owner of the carnival or amusement device or the owner’s agent or employee;

 (e) altering or enhancing the intended speed, course, or direction of a carnival or amusement device;

 (f) using, touching, or tampering with the controls of a carnival or amusement device designed solely to be operated by the owner of the carnival or amusement device or the owner’s agent or employee;

 (g) extending arms and legs beyond the carrier or seating area of a carnival or amusement device except at the express direction of the owner of the carnival or amusement device or the owner’s agent or employee;

 (h) throwing, dropping, or expelling an object from or toward a carnival or amusement device, except as permitted by the owner of the carnival or amusement device or the owner’s agent or employee;

 (i) getting on or off a carnival or amusement device, except at the designated time and area, if any, at the direction of the owner of the carnival or amusement device or the owner’s agent or employee or in an emergency;

 (j) not reasonably controlling the speed or direction of the rider or a carnival or amusement device that requires the rider to control or direct himself or the device; and

 (k) overloading a carnival or amusement device beyond its designed capacity.

 (B) A rider must not get on or attempt to get on a carnival or amusement device unless the rider, or the rider’s parent or guardian on the rider’s behalf, reasonably determines that, at a minimum, the rider:

 (1) has sufficient knowledge to use, get on, and get off the carnival or amusement device safely without instruction or has requested and received before getting on the carnival or amusement device sufficient information to get on, use, and get off the device safely;

 (2) has located, reviewed, and understood any signs in the vicinity of the carnival or amusement device and has satisfied any posted height or other restrictions or requirements;

 (3) knows the range and the limits of his ability and knows that the requirements of the carnival or amusement device do not exceed those limits;

 (4) is not under the influence of alcohol or any drug that affects his ability to safely use the carnival or amusement device or to obey the posted rules or warnings or instructions; and

 (5) is authorized by the owner of the carnival or amusement device or the owner’s agent or employee to get on the carnival or amusement device.

 (C)(1) A rider, or a rider’s parent or guardian on the rider’s behalf, shall report in writing to the owner of the carnival or amusement device any injury sustained on a carnival or amusement device before leaving the owner’s premises, including:

 (a) the name, address, and phone number of the injured person;

 (b) a full description of the incident, the injuries claimed, and any treatment received and the location, date, and time of the injury;

 (c) the cause of the injury, if known; and

 (d) the names, addresses, and phone numbers of any witnesses to the incident.

 (2) If a rider, or a rider’s parent or guardian on the rider’s behalf, is unable to file a report because of the severity of the rider’s injuries, the rider, or the rider’s parent or guardian, shall file the report as soon as reasonably possible.

 (3) The failure of a rider, or a rider’s parent or guardian on the rider’s behalf, to report an injury under this subsection has no effect on the rider’ s right to commence a civil action.

HISTORY: 2005 Act No. 30, Section 1, eff January 1, 2006.

**SECTION 41‑18‑330.** Obligations of parents and guardians.

 Parents or guardians of riders have a duty to ensure that the rider complies with all provisions of this article.

HISTORY: 2005 Act No. 30, Section 1, eff January 1, 2006.

**SECTION 41‑18‑340.** Detention by security officer for safety warning violation; defense in civil action for detention.

 (A) A security or law enforcement officer may detain a person for a reasonable time in a reasonable manner for the purpose of conducting an investigation if the security or law enforcement officer has reasonable cause to believe that the person has violated any posted rules or warnings or instructions of the owner of the carnival or amusement device or the owner’s agent or employee.

 (B) In a civil action brought by a person resulting from a detention of a person by a security or law enforcement officer, it is a defense to that action that the security or law enforcement officer who detained the person had reasonable cause to believe that the person had violated a posted rule or warning or instruction of the carnival or amusement device owner, or of the owner’s employee or agent, and that the security or law enforcement officer detained the person for a reasonable time in a reasonable manner for the purpose of conducting an investigation of the alleged violation.

HISTORY: 2005 Act No. 30, Section 1, eff January 1, 2006.

**SECTION 41‑18‑350.** Notice of safety warning compliance obligation; place of posting.

 (A) The owner of a carnival or amusement device shall display signs that include this statement:

 State law requires riders to obey all posted signs and warnings and instructions and to behave in a manner that will not cause or contribute to injuring themselves or others. Riders must report all injuries before leaving.

 (B) The owner shall display these signs at:

 (1) any station for reporting an injury;

 (2) any first aid station; and

 (3) either:

 (a) any entrance or exit to or from the premises designated for riders; or

 (b) any area or structure at which riders may purchase admission or obtain authority to use a carnival or amusement device.

HISTORY: 2005 Act No. 30, Section 1, eff January 1, 2006.

**SECTION 41‑18‑360.** Wilful violations; penalties.

 A person who wilfully violates this article is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than two months or both.

HISTORY: 2005 Act No. 30, Section 1, eff January 1, 2006.