

H.780

Introduced by

Date:

Subject: Recreation and sport; amusement rides; inspection

Sec. 1. FINDINGS

The General Assembly finds that:

- (1) Fairs are essential to the character, community life, and economy of Vermont, and amusement rides and devices help to increase fair attendance;
- (2) An inspection regime for amusement rides and devices in the State of Vermont will enhance the public safety; and
- (3) Establishing an inspection regimen according to the nationally regarded ASTM International standards, used in most states in the United States of America, will promote the safety of Vermonters and visitors that patronize fairs and other attractions.

Sec. 2. 31 V.S.A. § 721 Definitions is amended to read:

As used in this chapter, the following words shall, unless the context requires otherwise, have the following meanings:

“Agency”, the Agency of Agriculture, Food and Markets of the State of Vermont;

“Amusement Park”, a permanent location for the operation of Amusement Rides and

Amusement Devices, which may include a family entertainment center;

“Amusement Ride” or “Amusement Device”, a device or combination of devices or elements that carry, convey, or direct one or more persons over or through a fixed or restricted course or within a defined area, for the primary purpose of amusement or entertainment, in an open or enclosed location and which may be fixed to a location or moved from location to location or as may be further defined by ASTM International;

“ASTM” or “ASTM International”, refers to ASTM International, a globally recognized leader in the development and delivery of voluntary consensus standards formerly known as the American Society for Testing and Materials International;

“Carnival” or “Mobile Show”, a mobile enterprise principally devoted to offering amusement or entertainment to the public in, upon, or by means of portable Amusement Rides or Amusement Devices or temporary structures in any number or combination;

“Certificate of Operation”, a certificate to operate Amusement Rides and Amusement Devices, which shall be issued to Owners or Operators by the Agency of Agriculture, Food and Markets of the State of Vermont under the criteria provided for in Sec. 722;

“Installation” or “Set Up”, the actual act of onsite construction or erection and making ready for use of an Amusement Ride or Amusement Device;

“Inspector”, a person who, through education, experience, and training, including a valid Level II or greater certification from the National Association of Amusement Ride Safety Officials, or a Level II or greater inspector or maintenance certification from the Amusement Industry Manufacturers and Suppliers International;

“Major Modification”, any change in either the structural or operational characteristics of an Amusement Ride or Amusement Device, which will alter its performance from that specified in the manufacturer’s design criteria;

“Manufacturer”, the party producing the Amusement Ride or Amusement Device and performing Major Modifications and may also include the designer or engineer;

“Operator”, a person, including the State of Vermont or any agency thereof, having direct control of the starting, stopping, or speed of an Amusement Ride or Amusement Device;

“Owner”, the title holder or lessee, including the State of Vermont or any agency thereof, of Amusement Rides or Amusement Devices; and

“Patron”, any person, for the purpose of amusement or entertainment, utilizing any Amusement Ride or Amusement Device that is either under the control of an operator or a self-directed Amusement Ride or Amusement Device.

Sec. 3. 31 V.S.A. § 722 is amended to read:

§ 722. CERTIFICATE OF OPERATION

(a) Any person or entity operating an Amusement Ride or Amusement Device within the State of Vermont shall obtain a Certificate of Operation issued by the Agency of Agriculture, Food and Markets (the “Agency”) to the Owner or Operator.

(b) The Agency shall issue a “Certificate of Operation” not later than fifteen (15) days before the Amusement Ride(s) or Amusement Device(s) is (are) first operated in the State, if the Owner or Operator submits all the following:

(1) a certificate of insurance from a carrier authorized to do business in the State of Vermont in the amount of not less than \$1,000,000.00 that insures both the Owner and the Operator against liability for bodily injury to persons arising out of the use or operation of the Amusement Ride(s) or Amusement Device(s);

(2) an annual certificate of inspection from an Inspector (“Certificate of Inspection”);
and,

(3) payment of a fee by the Owner or Operator in the amount of \$100.00 for the operation of any and all Amusement Rides or Amusement Devices within the State of Vermont as listed on the Certificate of Operation; and

(c) The Certificate of Operation shall be valid for one (1) year from the date of issue.

(d) A copy of the Certificates of Operation and Inspection shall be maintained at the office of the Amusement Ride or Amusement Device Owner or Operator.

(e) Any person or entity operating an Amusement Ride or Amusement Device within the State of Vermont must comply with ASTM International standards F770 (Standard Practice for Ownership, Operation, Maintenance, and Inspection of Amusement Rides and Devices), F2374

(Standard Practice For Design, Manufacture, Operation, and Maintenance Of Inflatable Amusement Devices), and F2376 (Standard Practice For Classification, Design, Manufacture, Construction, and Operation Of Water Slide Systems).

Sec. 4. Presently appearing as 31 V.S.A. § 723, this section shall be recodified as **31 V.S.A. § 723a**. The title of 31 V.S.A. § 723 is amended to read “Operations and Patron Responsibilities”.

Sec. 5. Following 31 V.S.A. § 723, **31 V.S.A. § 723b** is added to read:

§ 723b. SAFETY INSPECTIONS

(a) An Amusement Ride or Amusement Device shall be inspected annually by an Inspector. An Inspector shall, in conformity with ASTM F2974 (Standard Guide For Auditing Amusement Rides And Devices), evaluate an Amusement Ride or Amusement Device to determine its conformance with ASTM standard F770 (Standard Practice for Ownership, Operation, Maintenance, and Inspection of Amusement Rides and Devices), F2374 (Standard Practice For Design, Manufacture, Operation, and Maintenance Of Inflatable Amusement Devices), and F2376 (Standard Practice For Classification, Design, Manufacture, Construction, and Operation Of Water Slide Systems).

(b) In addition to an annual inspection required for a Certificate of Operation, Operators and Owners of an Amusement Ride or Amusement Device shall perform safety inspections, in conformity with ASTM F2974 (Standard Guide For Auditing Amusement Rides And Devices), as follows:

(1) an Amusement Ride or Amusement Device at a fixed location shall be inspected by the Owner or Operator, or his, her, or its designee, pursuant to ASTM standard ASTM F770 (Standard Practice for Ownership, Operation, Maintenance, and Inspection of Amusement Rides and Devices), F2374 (Standard Practice For Design, Manufacture, Operation, and Maintenance Of Inflatable Amusement Devices), and F2376 (Standard Practice For Classification, Design, Manufacture, Construction, and Operation Of Water Slide Systems).

(2) an Amusement Ride or Amusement Device that is moved from location to location shall be inspected by the Owner or Operator, or his, her, or its designee pursuant to ASTM standard F770 (Standard Practice for Ownership, Operation, Maintenance, and Inspection of Amusement Rides and Devices), F2374 (Standard Practice For Design, Manufacture, Operation, and Maintenance Of Inflatable Amusement Devices), and F2376 (Standard Practice For Classification, Design, Manufacture, Construction, and Operation Of Water Slide Systems) on each occasion after the Amusement Ride or Amusement Device has been Set Up but before being used to carry or convey passengers.

(c) The Operator of an Amusement Ride or Amusement Device shall:

- (1) keep records of all safety inspections in his, her, or its office in a manner and format to be prescribed by the Agency;
- (2) make those records available to the Agency promptly upon request; and

(3) maintain at his, her, or its office a copy or record of the most recent safety inspection(s) of each Amusement Ride or Amusement Device.

Sec. 6. 31 V.S.A. § 723c is added to read:

§ 723c. PATRON RESPONSIBILITIES

(a) A Patron shall:

(1) not embark upon or disembark from an Amusement Ride or Amusement Device except at a designated location and during designated hours of operation;

(2) not throw or expel any object from any Amusement Ride or Amusement Device while riding;

(3) not act in any manner while riding on an Amusement Ride or Amusement Device that may interfere with its proper or safe operation, including, but not limited to, tampering with or taking any action to defeat the operation of safety restraint systems;

(4) not engage in any type of conduct that may injure any person or property;

(5) not place any object in the track of an Amusement Ride or Amusement Device that may cause injury to any third party or property;

(6) while operating any self-directed Amusement Ride or Amusement Device, maintain control of his or her speed and course at all times;

(7) read all instructional and warning signage before boarding any Amusement Ride or Amusement Device;

(8) shall follow any written or oral instruction given regarding its use;

(9)not embark on any Amusement Ride or Amusement Device without authority of the Operator;

(10) not enter into any facility or portion of the facility that has been designated closed;

(11) be presumed to know his or her own capability to utilize an Amusement Ride or Amusement Device;

(12) be presumed to know of the existence of certain unavoidable risks inherent in the utilizing of an Amusement Ride or Amusement Device, and shall assume the risk of injury or loss caused by such inherent risks;

(13) before entering onto or embarking on any Amusement Ride or Amusement Device, have control of clothing and other apparel for the purpose of restraining or preventing any item from being caught or entangled in the Amusement Ride or Amusement Device or falling or flying off to the detriment of other patrons; and

(14) forfeit his or her Amusement Ride or Amusement Device use privileges and may be refused further use of an Amusement Ride or Amusement Device if the patron fails to heed a warning issued by an Owner or Operator of an Amusement Ride or Amusement Device.

(b)No Owner or Operator of an Amusement Ride or Amusement Device, its owners, employees, or agents shall be held responsible for ensuring the safety of or for damages, including bodily injury or death, resulting to Patrons who, without license, permission or authority, access areas designated as closed to Patrons or the general public.

(c)(1) A Patron or member of the general public involved in an incident at an Amusement Park, Carnival or Mobile Show, which results in bodily injury to any person, has a duty to report the incident, the identities of the persons involved, and his or her name and local and permanent address to the Owner or Operator prior to leaving the Amusement Park, Carnival or Mobile Show. The Patron or member of the general public may satisfy this duty by providing that information to first aid or customer service personnel at a first aid or customer service facility within the Amusement Park, Carnival or Mobile Show or by providing it to an employee or agent of the Owner or Operator responding to and investigating the incident.

(2) No Owner or Operator of the Amusement Park, Carnival, Mobile Show, Amusement Ride or Amusement Device, its employees or agents shall be held responsible for ensuring compliance with these duties by any Patron or member of the general public, nor shall it be liable in any way for a failure to obtain such person's name or address.

(d)(1) In any action brought against an Amusement Park, Carnival, Mobile Show, Amusement Ride or Amusement Device Owner or Operator, based on negligence, evidence that the conduct of an Owner or Operator has conformed with the provisions of this chapter shall be evidence of due care.

(2) In any action brought against an Amusement Park, Carnival, Mobile Show, Amusement Ride or Amusement Device Owner or Operator, it shall be a defense to

such action that a Patron or member of the general public involved in the incident giving rise to the action did not comply with the Patron Responsibilities set forth in this chapter, including, but not limited to, the duty to report an incident involving bodily injury.

(3) An action by a Patron or member of the general public against an
Owner

or Operator to recover for any damages or injury, including bodily injury or death, arising out of the ownership or operation of an Amusement Park, Carnival, Mobile Show, Amusement Ride or Device shall be brought within one (1) year after the date of the injury, including bodily injury or death.

Sec. 7. 31 V.S.A. § 724 is amended to read:

§ 724. ADVISORY BOARD, PENALTY, AND ENFORCEMENT

(a) There shall be established in the Agency an advisory board, to be known as the “Amusements and Attractions Advisory Board” (the “Board”), to advise the secretary of the Agency (the “Secretary”) in relation to industry standards and his or her duties and powers pursuant to this chapter. This board shall consist of the Secretary or a member of the Agency designated by the Secretary from time to time, and 5 persons appointed by the governor for terms of 4 years. Of such persons appointed, each shall be a person engaged in a business generally related to amusements and attractions, such as an Amusement Park, Carnival, Mobile Show, family entertainment center, fair, inflatables, water park or Manufacturer.

(b) If, at any time, the Agency determines that an Amusement Ride or Amusement Device

Owner or Operator is in violation of this chapter, the Agency may order the Owner or Operator to cease operating any Amusement Ride or Amusement Device in this State until Owner or Operator is in compliance with this chapter. The Agency shall post in full public view an order to cease operation on all affected Amusement Rides or Amusement Devices. The Owner or Operator shall be entitled to due process and to avail itself of the appeal process provided by the Vermont Administrative Procedures Act, 3 V.S.A. ch. 25.

(c) An Amusement Ride or Amusement Device Owner or Operator who violates any provision of this chapter shall be punished by a fine of not more than \$1,000.00; provided, however, that any person who operates an Amusement Ride or Amusement Device, after a Certificate of Operation has been suspended or revoked, shall be punished by a fine of \$100.00 for each day of operation. Such fine, suspension or revocation may be levied by the Agency. Any person subject to such fine, suspension or revocation shall be entitled to due process and to avail himself, herself, or itself of the appeal process provided by the Vermont Administrative Procedures Act, 3 V.S.A. ch. 25. **Sec. 8. EFFECTIVE DATE**

This act shall take effect on January 1, 2019.