SENATE DOCKET, NO. 608 FILED ON: 1/15/2015

SENATE . . . . . No. 1260

The Commonwealth of Massachusetts

PRESENTED BY:

Jennifer L. Flanagan

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to amusement devices.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Jennifer L. Flanagan	*Worcester and Middlesex*
Brian M. Ashe	*2nd Hampden*
James B. Eldridge	*Middlesex and Worcester*

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SENATE . . . . . No. 1260

By Ms. Flanagan, a petition (accompanied by bill, Senate, No. 1260) of Jennifer L. Flanagan, Brian M. Ashe and James B. Eldridge for legislation relative to amusement devices. Public Safety and Homeland Security.

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act relative to amusement devices.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Chapter 140 of the General Laws is hereby amended by striking out section 205A, as appearing in the 2006 Official Edition, and inserting in place thereof the following sections: Section 205A. Amusement Rides and Devices; Board; establishment; membership; appointment; terms; compensation; expenses; personnel There shall be in the department, but not under the control of the commissioner of public safety, an amusements and attractions board. This board shall consist of the commissioner or a member of the department designated by the commissioner from time to time, and ten persons appointed by the governor for terms of four years, of whom two shall be persons who each own or operate an amusement park, two shall be persons who each own or operate a carnival or mobile show, two shall be persons who each own or operate a fair or fairgrounds, two shall be persons who own or operate a waterpark or an family entertainment center, one shall be a person engaged in a business generally related to amusements and attractions business, and one a representative of the public. Notwithstanding the foregoing, the terms of the initial six gubernatorial appointees shall be as follows: two appointees

for a two-year term; two appointees for a three-year term; and, two appointees for a four-year term. The governor shall from time to time designate one of the appointed members to serve as chairperson. The commissioner of public safety shall provide the board with such clerical and other assistance and inspectional personnel as may be necessary to carry out the duties of the board. This section shall not apply to recreational tramways, as defined by section 71I of chapter 143, manually-operated amusement rides with coined devices, skill games or playground equipment. Section 205B. Definitions As used in sections two hundred and five A to two hundred and five K, inclusive, the following words shall, unless the context otherwise requires, have the following meanings: “Amusement Park” is a permanent location for the operation of amusement rides and devices which may include a family entertainment center (FEC). “Amusement Ride or Amusement Device” is 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. The term “amusement ride or amusement device” shall include the following: (1) Ferris Wheel; (2) Carousel; (3) Inclined railway; (4) Circular Ride; (5) Flat Ride; (6) High Ride; and (7) Kiddie Ride “ASTM” is ASTM International, also known as the American Society for Testing and Materials International. “Board” is the Amusement Ride and Device Board. “Carnival” or “Mobile Show” is a mobile enterprise principally devoted to offering amusement or entertainment to the public in, upon, or by means of portable amusement rides or devices or temporary structures in any number or combination, whether or not associated with other structures or forms of public attraction. “Circular Rides” are amusement rides whose motion is primarily rotary, in a fixed or variable plane from horizontal to 45 degrees above

horizontal. “Designer/engineer” is a party that establishes and describes the configuration of an amusement ride or amusement device, or the components thereof, establishes strength and fatigue life, designs and develops electrical/electronic control systems, and defines inspection criteria. “Facility” is the area designated by the person or organization having operational responsibility for certain amusement rides and amusement devices which is to be administered or operated as a single enterprise. “Flat Rides” are amusement rides that operate on a single level, whether over a controlled, fixed course or track, or confined to a limited area of operation. “High Rides” are amusement rides whose motion is in a fixed or variable plane from horizontal to vertical. “Inflatable Amusement Devices” are amusement devices that incorporate a structuring and mechanical system and employ a high-strength fabric or film that achieves strength, shape, and stability by pretensioning with internal air pressure, all of which are intended to provide an enclosed area for the self-enjoyment of those so confined within. “Installation or erection” is the actual act of onsite construction or the physical setting up and making ready for use of an amusement ride or device. “Inspector” is a person who, through education, experience, and training, is able to properly evaluate an amusement ride or device to determine its conformance, within the scope of the inspection, with ASTM International Committee F24 standards. “Kiddie Rides” are amusement rides designed primarily for use by children younger than twelve years of age. “Maintenance Mechanic” is an individual designated by the owner of an amusement device as the person responsible for overseeing the maintenance of amusement rides or amusement devices and who has a valid NAARSO (National Association of Amusement Ride Safety Officials) Level I or II certification, AIMS (Amusement Industry Manufacturers & Suppliers International) Level I or II maintenance certification, or a certification by a similar national organization as approved by the board, or a person holding a Bachelors of Science in

engineering, and who also has a minimum of three years experience in the amusement industry, or a person certified by the board as a certified maintenance mechanic. “Major Modification” is 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” is the party producing the amusement ride or amusement device and performing major modifications and may also include the designer/engineer. “Operator” is a person, including the Commonwealth or any political subdivision thereof, having direct control of the starting, stopping, or speed of an amusement ride or amusement device. “Owner” is the title holder or lessee, including an agency of the Commonwealth or a political subdivision thereof, of amusement rides or amusement devices administered or operated as a single enterprise. “Patron” is any person utilizing any amusement ride or amusement device that is under the control of an operator for the purpose of amusement or entertainment or a self directed amusement device. Section 205C. Rules and regulations After a hearing, the board shall adopt, and may from time to time amend or revoke, rules and regulations in conformance with the standards and guidelines of ASTM for the inspection, assembly, erection, installation, design, construction, major modification, operation, and maintenance of amusement rides and amusement devices and for the licensing and certification of inspectors thereof as provided by Mass. Gen. Laws c. 146, section 60, et seq. The board shall in like manner adopt, and from time to time amend or revoke, rules and regulations for a system of signs to be used by amusement ride and amusement device owners and operators in order to promote the safety of patrons, workers, employees and visitors. Such system shall incorporate standards in general use in the amusement industry to evaluate amusement rides and amusement devices and to adequately alert patrons to the known risks associated with amusement rides and amusement devices and to

certain laws, rules and regulations. The attorney general shall assist the board in framing such rules and regulations. Section 205D. Licenses; issuance No amusement ride or device shall be operated commercially unless a license for such operation has been issued by the board. Such license shall be issued for a term of not longer than one year, unless revoked for cause by the board, upon application therefore on a form furnished by the board, and upon a determination by the board that the amusement ride or amusement device conforms to ASTM standards and the rules and regulations of the board. Such license shall not be issued without the provision, at least ten (10) days prior to the commencement of operation of an amusement ride or amusement device by the applicant, of (1) a certificate of insurance confirming the existence of an insurance policy for liability coverage in an amount established by the board, but not less than $1,000,000, from a carrier authorized to do business in the Commonwealth with a ten-day notice of cancelation provision to the Commonwealth and (2) a report, satisfactory to the board, from an inspector who is not an employee of the Commonwealth, certified for competency by the board. In making such determination the board may rely upon the report of an inspector certified by it in accordance with its rules and regulations. A license issued by the board shall be valid throughout the Commonwealth. An amusement ride or amusement device shall not be operated at any time without the aforesaid liability insurance coverage. Section 205E. Fees. Each application for a license or a renewal thereof shall be accompanied by payment of a fee for each amusement ride and amusement device. Each application from a person who is not employed by the Commonwealth for a certificate of competency, or a renewal thereof, as an inspector of amusement rides and amusement devices shall be accompanied by payment of a fee. Each application for a certificate of competency, or a renewal thereof, for a maintenance mechanic of amusement rides and amusement devices shall be accompanied by payment of a fee. The

amounts of such fees, after recommendation of the board, shall be determined annually by the commissioner of administration under the provision of section three B of chapter seven. Section 205F. Orders; appeal Any inspector or applicant for a certificate of competency to be an inspector of amusement rides and amusement devices who is aggrieved by a final decision approved by the commissioner pursuant to Mass. Gen. Laws c. 146, section 63 may appeal therefrom to the board. Any owner or inspector, who is not an employee of the Commonwealth, or any operator who is aggrieved by any order of the board may appeal therefrom to the superior court. No such appeal shall suspend the operation of the order made by the board; provided that, the superior court may suspend the order of the board pending the determination of such appeal whenever, in the opinion of the court, justice may require such suspension. The superior court shall hear such appeal at the earliest convenient day and shall enter such decree as justice may require. Section 205G. Duties of owners; manufacturers; inspectors (1) An owner shall: (a) conspicuously place within the facility, in such form, size, and location as the board may require, notice in plain language, of the statute of limitations and notice period established in section 205I; (b) maintain a sign system in all facilities in accordance with rules and regulations promulgated by the board and shall be responsible for the maintenance and operation of facilities under its control in a reasonably safe condition or manner; provided, however, that an owner shall not be liable for death or damages to persons or property, while at an amusement facility, which arise out of any risk inherent in the amusement facility activities; (c) engage or employ at least one person as a maintenance mechanic certified by the board as qualified to oversee the operation, maintenance, and inspection of amusement rides and amusement devices; (d) immediately close down an amusement ride or amusement device in the event of an “on ride or device incident” or a “loading or unloading incident” resulting in serious injury requiring

immediate admission and overnight hospitalization and observation by a licensed physician occurring as a result of a specific amusement ride or amusement device provided that the owner has notice of such admission to a hospital; (e) based on the recommendations of the manufacturer of a ride, each owner shall implement a program of maintenance, testing and inspection conforming to ASTM standards. (2) A manufacturer of an amusement ride or amusement device shall provide, with the delivery of each ride or device: (a) documented maintenance and operational instructions in the English language; (b) a written inspection procedure in the English language. Any change to any inspection procedure that is deemed essential by the manufacturer as a result of information not vailable to the manufacturer at the time of initial delivery shall be communicated to all known owners; and, otherwise conform to ASTM standards (3) An inspector shall: (a) perform inspections complying with all appropriate safety procedures; (b) provide, upon the owner's request, written documentation of inspection activities; and, otherwise conform to ASTM standards. Section 205H. Duties of patrons A patron: (1) shall not embark upon or disembark from an amusement ride or amusement device except at a designated location and during designated hours of operation; (2) shall not throw or expel any object from any amusement ride or amusement device while riding thereon; (3) shall not act in any manner while riding on an amusement ride or amusement device that may interfere with its proper or safe operation; (4) shall not engage in any type of conduct that may injure any person or property; (5) shall 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) shall, while operating any patron-operated amusement ride or amusement device, maintain control of his or her speed and course at all times; (7) shall read all instructions before boarding any amusement ride or amusement device; (8) shall be presumed to have sufficient abilities to use any amusement ride

or amusement device the patron boards and shall follow any written or oral instruction given regarding its use; (9) shall not embark on any amusement ride or amusement device without authority of the operator; (10) shall not enter into any facility or portion thereof that has been designated closed;any person entering a closed area of a facility shall be responsible for any death or injury resulting from his or her action; (11) shall be presumed to know his or her own capability to ride amusement rides and amusement devices; (12) shall be presumed to know of the existence of certain unavoidable risks inherent in the riding of amusement rides and amusement devices, and shall assume the risk of injury or loss caused by such inherent risks; (13) shall, 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 device or falling or flying off to the detriment of other patrons; and, (14) who fails to heed a warning issued by an owner or operator of an amusement ride or amusement device shall forfeit his or her amusement ride or amusement device use privileges and may be refused further use of an amusement ride or amusement device. Section 205I. Actions against facility owners or operators; limitations For the purpose of sections 205A to 205K, inclusive, in any action brought against an amusement ride or amusement device facility owner or operator, based on negligence, evidence that the conduct of an owner or operator has conformed with the provisions of this chapter and the rules or regulations of the board made pursuant to section 205C of this Chapter shall be evidence of due care. No action may be maintained against an owner or operator for injury to a patron unless, as a condition precedent thereof, the person so injured or his representative shall, within ninety days of the incident, give to such owner and operator notice, by registered mail, of the name and address of the person injured, and the time, place, and cause of the injury. Failure to give the foregoing

notice shall bar recovery, unless the court finds under the circumstances of the particular case that such facility owner or operator had actual knowledge of said injury or had reasonable opportunity to learn of said injury within said ninety-day period, and was otherwise not substantially prejudiced by reason of not having been provided actual written notice of said injury within said period. In any case in which lack of written notice, actual knowledge, or a reasonable opportunity to obtain knowledge of any injury within said ninety-day period is alleged by such facility owner or operator, the burden of proving substantial prejudice shall be on the owner or operator. An action to recover for such injury shall be brought within one year after the date of such injury. Section 205J. Penalties Whoever violates any provision of section 205D, 205G, or any rule or regulation made under the provisions of section 205C, shall be punished by a fine of not more than one thousand dollars; provided, however, that any person who operates an amusement ride or amusement device, after the license therefore has been suspended or revoked, shall be punished by a fine of one hundred dollars for each day of such operation. Section 205K. Jurisdiction and control Amusement Rides and Amusement Devices shall not be subject to the provisions of 780 Code of Massachusetts Regulations also known as the building code, and shall not be subject to the jurisdiction or control of the Board of Building Regulations and Standards.