

HOUSE No. 3275

The Commonwealth of Massachusetts

PRESENTED BY:

Joseph F. Wagner

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:	DATE ADDED:
<i>Joseph F. Wagner</i>	<i>8th Hampden</i>	<i>1/20/2017</i>

HOUSE No. 3275

By Mr. Wagner of Chicopee, a petition (accompanied by bill, House, No. 3275) of Joseph F. Wagner relative to amusement devices. Public Safety and Homeland Security.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 2194 OF 2015-2016.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

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:

1 SECTION 1. Chapter 140 of the General Laws is hereby amended by striking out section
2 205A, as appearing in the 2014 Official Edition, and inserting in place thereof the following
3 sections:-

4 Section 205A. There shall be in the department, but not under the control of the
5 commissioner of public safety, an amusements and attractions board. This board shall consist of
6 the commissioner or a member of the department designated by the commissioner from time to
7 time, and 10 persons appointed by the governor for terms of 4 years, of whom 2 shall be persons
8 who each own or operate an amusement park, 2 shall be persons who each own or operate a
9 carnival or mobile show, 2 shall be persons who each own or operate a fair or fairgrounds, 2
10 shall be persons who own or operate a waterpark or a family entertainment center, 1 shall be a

11 person engaged in a business generally related to amusements and attractions business, and 1 a
12 representative of the public. Notwithstanding the foregoing, the terms of the initial 6
13 gubernatorial appointees shall be as follows: 2 appointees for a 2-year term; 2 appointees for a 3-
14 year term; and, 2 appointees for a 4-year term. The governor shall from time to time designate 1
15 of the appointed members to serve as chairperson.

16 The commissioner of public safety shall provide the board with such clerical and other
17 assistance and inspectional personnel as may be necessary to carry out the duties of the board.
18 This section shall not apply to recreational tramways, as defined by section 71I of chapter 143 of
19 the General Laws, manually-operated amusement rides with coined devices, skill games or
20 playground equipment.

21 Section 205B. As used in sections 205A to 205K, inclusive, the following words shall,
22 unless the context requires otherwise, have the following meanings:

23 “Amusement Park”, a permanent location for the operation of amusement rides and
24 devices which may include a family entertainment center.

25 “Amusement Ride or Amusement Device”, a device or combination of devices or
26 elements that carry, convey, or direct one or more persons over or through a fixed or restricted
27 course or within a defined area for the primary purpose of amusement or entertainment in an
28 open or enclosed location and which may be fixed to a location or moved from location to
29 location or as may be further defined by ASTM International. The term “amusement ride or
30 amusement device”, shall include the following: (i) ferris wheel; (ii) carousel; (iii) inclined
31 railway; (iv) circular ride; (v) flat ride; (vi) high ride; and (vii) kiddie ride.

32 “ASTM” or “ASTM International”, refers to the American Society for Testing and
33 Materials International.

34 “Board”, the Amusement Ride and Device Board.

35 “Carnival” or “Mobile Show”, a mobile enterprise principally devoted to offering
36 amusement or entertainment to the public in, upon, or by means of portable amusement rides or
37 devices or temporary structures in any number or combination, whether or not associated with
38 other structures or forms of public attraction.

39 “Circular Rides”, amusement rides whose motion is primarily rotary, in a fixed or
40 variable plane from horizontal to 45 degrees above horizontal.

41 “Designer” or “Engineer”, a party that establishes and describes the configuration of an
42 amusement ride or amusement device, or the components thereof, establishes strength and
43 fatigue life, designs and develops electrical or electronic control systems, and defines inspection
44 criteria.

45 “Facility”, the area designated by the person or organization having operational
46 responsibility for certain amusement rides and amusement devices which is to be administered or
47 operated as a single enterprise.

48 “Flat Rides”, amusement rides that operate on a single level, whether over a controlled,
49 fixed course or track, or confined to a limited area of operation.

50 “High Rides”, amusement rides whose motion is in a fixed or variable plane from
51 horizontal to vertical.

52 “Inflatable Amusement Devices”, amusement devices that incorporate a structuring and
53 mechanical system and employ a high-strength fabric or film that achieves strength, shape, and
54 stability by pretensioning with internal air pressure, all of which are intended to provide an
55 enclosed area for the self-enjoyment of those so confined within.

56 “Installation” or “Erection”, the actual act of onsite construction or the physical setting up
57 and making ready for use of an amusement ride or device.

58 “Inspector”, a person who, through education, experience, and training, is able to
59 properly evaluate an amusement ride or device to determine its conformance, within the scope of
60 the inspection, with ASTM International Committee F24 standards.

61 “Kiddie Rides”, amusement rides designed primarily for use by children younger than 12
62 years of age.

63 “Maintenance Mechanic”, an individual designated by the owner of an amusement device
64 as the person responsible for overseeing the maintenance of amusement rides or amusement
65 devices and who has a valid National Association of Amusement Ride Safety Officials Level I or
66 II certification, Amusement Industry Manufacturers and Suppliers International Level I or II
67 maintenance certification, or a certification by a similar national organization as approved by the
68 board, or a person holding a bachelors of science in engineering, and who also has a minimum of
69 3 years of experience in the amusement industry, or a person certified by the board as a certified
70 maintenance mechanic.

71 “Major Modification”, any change in either the structural or operational characteristics of
72 an amusement ride or amusement device which will alter its performance from that specified in
73 the manufacturer’s design criteria.

74 “Manufacturer”, the party producing the amusement ride or amusement device and
75 performing major modifications and may also include the designer or engineer.

76 “Operator”, a person, including the commonwealth or any political subdivision thereof,
77 having direct control of the starting, stopping, or speed of an amusement ride or amusement
78 device.

79 “Owner”, the title holder or lessee, including an agency of the commonwealth or a
80 political subdivision thereof, of amusement rides or amusement devices administered or operated
81 as a single enterprise.

82 “Patron”, any person utilizing any amusement ride or amusement device that is under the
83 control of an operator for the purpose of amusement or entertainment or a self directed
84 amusement device.

85 Section 205C. After a hearing, the board shall adopt, and may from time to time amend
86 or revoke, rules and regulations in conformance with the standards and guidelines of ASTM for
87 the inspection, assembly, erection, installation, design, construction, major modification,
88 operation, and maintenance of amusement rides and amusement devices and for the licensing and
89 certification of inspectors thereof as provided by section 60 of chapter 146 of the General Laws.
90 The board shall in like manner adopt, and from time to time amend or revoke, rules and
91 regulations for a system of signs to be used by amusement ride and amusement device owners
92 and operators in order to promote the safety of patrons, workers, employees and visitors. The
93 system shall incorporate standards in general use in the amusement industry to evaluate
94 amusement rides and amusement devices and to adequately alert patrons to the known risks

95 associated with amusement rides and amusement devices and to certain laws, rules and
96 regulations. The attorney general shall assist the board in framing rules and regulations.

97 Section 205D. No amusement ride or device shall be operated commercially unless a
98 license for operation has been issued by the board. A license shall be issued for a term of no
99 longer than 1 year, unless revoked for cause by the board, upon application on a form furnished
100 by the board, and upon a determination by the board that the amusement ride or amusement
101 device conforms to ASTM standards and the rules and regulations of the board. A license shall
102 not be issued without the provision, at least 10 days prior to the commencement of operation of
103 an amusement ride or amusement device by the applicant, of: (i) a certificate of insurance
104 confirming the existence of an insurance policy for liability coverage in an amount established
105 by the board, but not less than \$1,000,000, from a carrier authorized to do business in the
106 commonwealth with a 10-day notice of cancelation provision to the commonwealth; and (ii) a
107 report, satisfactory to the board, from an inspector who is not an employee of the
108 commonwealth, certified for competency by the board. In making a determination, the board
109 may rely upon the report of an inspector certified by it in accordance with its rules and
110 regulations. A license issued by the board shall be valid throughout the commonwealth. An
111 amusement ride or amusement device shall not be operated at any time without the aforesaid
112 liability insurance coverage.

113 Section 205E. Each application for a license or a renewal shall be accompanied by
114 payment of a fee for each amusement ride and amusement device. Each application from a
115 person who is not employed by the commonwealth for a certificate of competency, or a renewal,
116 as an inspector of amusement rides and amusement devices shall be accompanied by payment of
117 a fee. Each application for a certificate of competency, or a renewal, for a maintenance mechanic

118 of amusement rides and amusement devices shall be accompanied by payment of a fee. The fee
119 amounts, after recommendation of the board, shall be determined annually by the commissioner
120 of administration under section 3B of chapter 7 of the General Laws.

121 Section 205F. Any inspector or applicant for a certificate of competency to be an
122 inspector of amusement rides and amusement devices who is aggrieved by a final decision
123 approved by the commissioner under section 63 of chapter 146 of the General Laws may appeal
124 to the board. Any owner or inspector, who is not an employee of the commonwealth, or any
125 operator who is aggrieved by any order of the board, may appeal to the superior court. No appeal
126 shall suspend the operation of the order made by the board; provided that, the superior court may
127 suspend the order of the board pending the determination of the appeal whenever, in the opinion
128 of the court, justice may require suspension. The superior court shall hear an appeal at the
129 earliest convenient day and shall enter a decree as justice may require.

130 Section 205G. (a) An owner shall:

131 (1) conspicuously place within the facility, in form, size, and location as the board may
132 require, notice in plain language, of the statute of limitations and notice period established in
133 section 205I of chapter 140 of the General Laws;

134 (2) maintain a sign system in all facilities in accordance with rules and regulations
135 promulgated by the board and shall be responsible for the maintenance and operation of facilities
136 under its control in a reasonably safe condition or manner; provided, however, that an owner
137 shall not be liable for death or damages to persons or property, while at an amusement facility,
138 which arise out of any risk inherent in the amusement facility activities;

139 (3) engage or employ at least 1 person as a maintenance mechanic certified by the board
140 as qualified to oversee the operation, maintenance, and inspection of amusement rides and
141 amusement devices;

142 (4) immediately close down an amusement ride or amusement device in the event of an
143 “on ride or device incident” or a “loading or unloading incident” resulting in serious injury
144 requiring immediate admission and overnight hospitalization and observation by a licensed
145 physician occurring as a result of a specific amusement ride or amusement device provided that
146 the owner has notice of such admission to a hospital; and

147 (5) based on the recommendations of the manufacturer of a ride, implement a program of
148 maintenance, testing and inspection conforming to ASTM standards.

149 (b) A manufacturer of an amusement ride or amusement device shall provide, with the
150 delivery of each ride or device:

151 (1) documented maintenance and operational instructions in the English language; and

152 (2) a written inspection procedure in the English language. Any change to any inspection
153 procedure that is deemed essential by the manufacturer as a result of information not available to
154 the manufacturer at the time of initial delivery shall be communicated to all known owners, and
155 otherwise conform to ASTM standards.

156 (c) An inspector shall:

157 (1) perform inspections complying with all appropriate safety procedures; and

158 (2) provide, upon the owner’s request, written documentation of inspection activities, and
159 otherwise conform to ASTM standards.

160 Section 205H. A patron shall:

161 (a) not embark upon or disembark from an amusement ride or amusement device except
162 at a designated location and during designated hours of operation;

163 (b) not throw or expel any object from any amusement ride or amusement device while
164 riding;

165 (c) not act in any manner while riding on an amusement ride or amusement device that
166 may interfere with its proper or safe operation;

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

168 (e) not place any object in the track of an amusement ride or amusement device that may
169 cause injury to any third party or property;

170 (f) while operating any patron-operated amusement ride or amusement device, maintain
171 control of his or her speed and course at all times;

172 (g) read all instructions before boarding any amusement ride or amusement device;

173 (h) be presumed to have sufficient abilities to use any amusement ride or amusement
174 device the patron boards and shall follow any written or oral instruction given regarding its use;

175 (i) not embark on any amusement ride or amusement device without authority of the
176 operator;

177 (j) not enter into any facility or portion of the facility that has been designated closed; any
178 person entering a closed area of a facility shall be responsible for any death or injury resulting
179 from his or her action;

180 (k) be presumed to know his or her own capability to ride amusement rides and
181 amusement devices;

182 (l) be presumed to know of the existence of certain unavoidable risks inherent in the
183 riding of amusement rides and amusement devices, and shall assume the risk of injury or loss
184 caused by such inherent risks;

185 (m) before entering onto or embarking on any amusement ride or amusement device,
186 have control of clothing and other apparel for the purpose of restraining or preventing any item
187 from being caught or entangled in the amusement ride or device or falling or flying off to the
188 detriment of other patrons; and

189 (n) forfeit his or her amusement ride or amusement device use privileges and may be
190 refused further use of an amusement ride or amusement device if the patron fails to heed a
191 warning issued by an owner or operator of an amusement ride or amusement device.

192 Section 205I. For the purpose of sections 205A to 205K of chapter 140 of the General
193 Laws, inclusive, in any action brought against an amusement ride or amusement device facility
194 owner or operator, based on negligence, evidence that the conduct of an owner or operator has
195 conformed with the provisions of this chapter and the rules or regulations of the board made
196 under section 205C of chapter 140 shall be evidence of due care. No action may be maintained
197 against an owner or operator for injury to a patron unless, as a condition precedent, the person so
198 injured or his representative shall, within 90 days of the incident, give to the owner and operator
199 notice, by registered mail, of the name and address of the person injured, and the time, place, and
200 cause of the injury. Failure to give the previous notice shall bar recovery, unless the court finds
201 under the circumstances of the particular case that the facility owner or operator had actual

202 knowledge of the injury or had reasonable opportunity to learn of the injury within the 90-day
203 period, and was otherwise not substantially prejudiced by reason of not having been provided
204 actual written notice of the injury within that period. In any case where lack of written notice,
205 actual knowledge, or a reasonable opportunity to obtain knowledge of any injury within the 90-
206 day period is alleged by the facility owner or operator, the burden of proving substantial
207 prejudice shall be on the owner or operator. An action to recover for the injury shall be brought
208 within 1 year after the date of the injury.

209 Section 205J. Whoever violates any provision of sections 205D, 205G, or any rule or
210 regulation made under section 205C of chapter 140 of the General Laws, shall be punished by a
211 fine of not more than 1,000 dollars; provided, however, that any person who operates an
212 amusement ride or amusement device, after the license has been suspended or revoked, shall be
213 punished by a fine of 100 dollars for each day of operation.

214 Section 205K. Amusement rides and amusement devices shall not be subject to the
215 provisions of 780 CMR, also known as the building code, and shall not be subject to the
216 jurisdiction or control of the board of building regulations and standards.