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# Public Hearing

before

## ASSEMBLY LABOR COMMITTEE

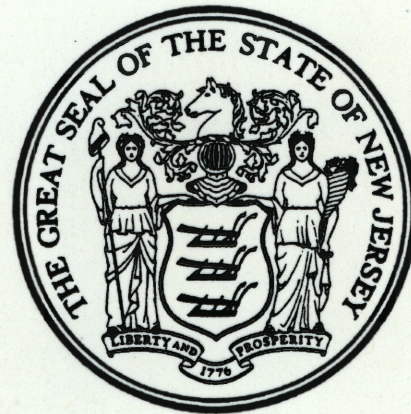
*"To review the efforts of the Department of Community Affairs to enforce the **Carnival-Amusement Rides Safety Act, P.L. 1975**, with special consideration of the impact of P.L. 1989, enacted on April 29, 1998"*

**LOCATION:** Committee Room 9  
State House Annex  
Trenton, New Jersey

**DATE:** March 25, 1999  
2:00 p.m.

### MEMBERS OF COMMITTEE PRESENT:

Assemblyman George F. Geist, Chairman  
Assemblyman Alex DeCroce  
Assemblyman Paul Kramer  
Assemblyman Kevin J. O'Toole  
Assemblywoman Mary T. Previte



### ALSO PRESENT:

Gregory L. Williams  
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*Committee Aide*

Jarrold C. Grasso  
*Assembly Majority*  
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GEORGE F. GEIST  
*Chairman*

KENNETH C. LeFEVRE  
*Vice-Chair*  
ALEX DeCROCE  
PAUL KRAMER  
KEVIN J. OTOOLE  
ARLINE M. FRISCIA  
MARY T. PREVITE

## New Jersey State Legislature

### ASSEMBLY LABOR COMMITTEE

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## PUBLIC HEARING NOTICE

**The Assembly Labor Committee will hold a public hearing on Thursday, March 25, 1999 at 2:00 PM in Committee Room 9, 3rd Floor, State House Annex, Trenton, New Jersey.**

**At the hearing, which will begin at 2:00 PM, the committee will review the efforts of the Department of Community Affairs to enforce the Carnival-Amusement Rides Safety Act, P.L.1975, c.105 (C.5:3-31 et seq.), with special consideration of the impact of P.L.1998, c.10, enacted on April 29, 1998, which was designed to strengthen the enforcement of the act.**

**Any person wishing to testify should provide 12 written copies of their testimony on the day of the hearing.**

*The public may address comments and questions to Gregory L. Williams, Committee Aide, or make bill status and scheduling inquiries to Patricia B. Scott, secretary, at (609)984-0445.*

Issued 3/19/99

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**ASSEMBLYMAN GEORGE F. GEIST (Chairman):** Good afternoon. Welcome to the Assembly Labor Committee hearing about the implementation of the Carnival-Amusement Rides Safety Act and the impact of the 1998 legislation. Let me, at the outset, emphasize that as Chair of this Labor Committee, I will continue to focus on legislative oversight in the implementation of the new, landmark law.

Last year, this Chairman was honored to join our Governor at Great Adventure for a signing ceremony that I will never ever forget. I would like to share with you that experience for the moment.

Last year, with my Geist guys, Gregory and Justin, now ages 12 and 13, we enjoyed a remarkable experience where our Governor literally personally secured the safety belt of my oldest son prior to her pushing the button enabling the new Batman ride to literally almost go into outer space. It was a day where I, as a father of my eldest Geist guy, felt safe and secure as a parent in seeing our New Jersey leader demonstrate, through her actions, her sensitivity to the safety of everyone. By the personal touch -- securing the seat belts of the children in the ride and by personally overseeing the safety by pushing the magical button, she, through her own personal leadership, enabled this father to sleep well at night knowing that this Committee did right, when this Committee was at the forefront of first action leading to final action on what is now landmark legislation. But, as my colleagues know, that was really a beginning when this Labor Committee started the process to listen and learn.

Last year was a better year than the previous year. I thank my colleagues. This law provided protection last year that enabled the summer of 1998 to be better than the summer of 1997. That was a team endeavor where

we together did the right thing by New Jersey. But I said last year, “We will continue the oversight to ensure that we are the best that we can be in terms of safety.”

Last year there were some isolated incidents that captured attention. The Clementon Park experience was a Camden County experience in the backyard of Assemblywoman Previte and Chairman Geist. Through that experience, there was a reminder of the need for continuing focus. I am personally the prosecutor in the community. I interacted with the police force in that community. There was action with emphasis on prosecution.

Today’s hearing enables us to continue our focus. Today’s hearing enables us to learn about the regulatory actions consistent with the legislation. Today’s hearing continues a commitment, but let it be crystal clear. Today’s hearing is just another hearing. We will continue to watch. We are continuing to watch the executive branch’s execution of the Act. The transfer of responsibility from the Department of Labor to the Department of Law and Public Safety enables a transfer of responsibility that we must make certain we oversee. Today’s hearing will provide us with that opportunity.

Are there any other comments from my colleagues before we proceed with the hearing? I know some of us have other responsibilities.

Assemblyman Kramer.

ASSEMBLYMAN KRAMER: Just a question. Did you take that Batman ride?

ASSEMBLYMAN GEIST: Assemblyman Kramer, that day-- I’m glad you asked.



ASSEMBLYMAN KRAMER: That would have been a real test of safety. I'll tell you that.

ASSEMBLYMAN GEIST: I was looking forward to another great adventure personally, but you noticed, I referenced to two Geist guys. My younger, Justin, decided that he liked the Governor so much that he wanted to stay with his father, on the ground. My younger son, Justin, was a smart son that day in that he really just truly enjoyed being there. By the way, Jarrod, our Committee staffer, was there also for that experience.

ASSEMBLYWOMAN PREVITE: Jarrod, did you go up on the Batman ride, too?

MR. GRASSO (Majority Aide): Yes, I did. I went with one of the Geist guys.

ASSEMBLYMAN GEIST: And that was a day where I was safe and secure on the ground with my son, seeing my other son being launched into outer space by our Governor. Were it not for Justin deciding to be with our Governor, I would have been in outer space as well.

ASSEMBLYMAN KRAMER: And you wore the Penguin outfit that day?

ASSEMBLYMAN GEIST: The Batman ride was well done that day. I guess you could say I was the Joker on the ground.

ASSEMBLYMAN KRAMER: Okay.

ASSEMBLYMAN GEIST: Pardon our humor as legislators.

Today's hearing is for us to listen and learn.

Today's hearing was continuation from the last session. To those here again, we appreciate your coming back. We will say you all come back now because we're going to continue to stay focused on this.

Today's witness list is led by someone who we expected to lead the last forum. He is responsible in his direction as the Director of the Division of Codes and Standards in the Department of Law and Public Safety. But before we have the first witness, we must have a quorum call.

Greg.

MR. WILLIAMS (Committee Aide): All right.

Assemblywoman Previte.

ASSEMBLYWOMAN PREVITE: Here.

MR. WILLIAMS: Assemblywoman Friscia. (no response)

Assemblyman O'Toole. (no response)

Assemblyman Kramer.

ASSEMBLYMAN KRAMER: Here.

MR. WILLIAMS: Assemblyman DeCroce.

ASSEMBLYMAN DeCROCE: Yes.

MR. WILLIAMS: Assemblyman LeFevre. (no response)

Assemblyman Geist.

ASSEMBLYMAN GEIST: Here.

Director Connolly, good afternoon and welcome.

WILLIAM M. CONNOLLY: I have the feeling that there's something someone hasn't told me because, when I left the office, my Division was part of the Department of Community Affairs; hopefully that is still so.

ASSEMBLYMAN GEIST: The Chair relies upon OLS.

MR. CONNOLLY: That's what I figured.

ASSEMBLYMAN GEIST: And they transferred your jurisdiction again. I thought it was the Department of Community Affairs, but Gregory transferred you without executive order.

ASSEMBLYMAN DeCROCE: Did they give him a raise?

ASSEMBLYMAN GEIST: Nice to see you.

MR. CONNOLLY: Nice to see you.

I had dropped off, last time, a copy of a written report, and I brought some extra copies just in case there was anyone who didn't cherish it so much that they saved it for the last two weeks. I'm not going to read from it or anything. It is written report that covers subjects in a little more detail than I'm going to do in my remarks.

What I'd like to say, first of all, thank you very much, Mr. Chairman, for inviting us here. We very much appreciate the interest and the support of the Legislature with this program.

The essence of the Amusement Ride Program involves an annual registration and an annual permit for each amusement ride. There is an inspection related to that permit before the ride is put in service -- each ride is put in service each year. And the third major component is an incident reporting system where whenever there is an incident in connection with the ride, not necessarily an injury, but various kinds and types of incidents, the ride operators are required to make a report to the Department. We collect those reports, analyze those reports, and where they indicate, we schedule inspections or take other enforcement actions. The highest level of incident -- the most serious level of incident reports are required to be made by hot line,

and the ride itself is not permitted to be operated until we clear it to operate after we receive one of those hot line reports.

Amusement ride safety, interestingly, is a lot like aircraft safety, and I will get into that a little bit in my remarks in that there really is not an amusement ride code. We certainly have regulations governing inspections and permits and things like that, but each ride is different much like each aircraft is different. Unlike buildings, there is not a detailed set of regulations that each ride has to conform to. The system relies very heavily on manufacturers designing the rides appropriately, preparing detailed maintenance schedules and recommendations, detailed training requirements for the people who would operate the rides, and detailed periodic testing requirements for the rides. As the rides get older, the maintenance requirements and the testing procedures get more stringent, much as it would with an aircraft. A large part of our job is to make sure that that is all being done the way it should be done.

We've been responsible, as you mentioned, Mr. Chairman, in the Department for the Amusement Ride Program for about 10 months. It seems a little longer than that. This is a subject in which there is a high level of interest. I just want to report to you on some of the things that have happened in those 10 months and some of the things that are still happening.

We've doubled the size of the inspection staff this summer as opposed to the summer before. We've also added three engineers to the Program. As a result, we were also able to double the number of inspections that were performed this past summer as compared to the summer before. We instituted an engineering review on all of the new rides to make sure that the

manufacturers had indeed carried out their responsibilities in terms of engineering them properly.

We surveyed all of the states in the union to find out what other states were doing to see if we could find out -- find some better ideas in terms of the way we could administer the Program. We discovered that we have a good law and that we had about average results. We think we can do a great deal better than that, but our problems by and large are not from a weakness in law, especially after the changes that were made last year. We just need to administer the law ever more vigorously to become a good deal better than average.

And we opened a dialog with the industry and with the advisory board that have been created by law. We reached out immediately to all the associations and all of the operators and tried to open a constructive dialog with them because it's our experience-- And we inspect and regulate a lot of things. The industry shares all of our concerns. And while every industry may have a handful of people who are not doing everything that they should, by and large everyone in the industry wants to do the right thing. The industry will be very helpful to us if we work closely with them. So we initiated that. Just this last month, we sponsored a sort of prespring conference for all of the industry to try to bring them up to date on changes that are happening and what we expect and to hear their questions and concerns. That sort of thing we will continue to do.

We've made a number of changes, in addition to just increasing staff, that I want to mention. One is that we've refined the reporting procedures and made it a great deal more clear. When the operators had to

make immediate hot line reports to us on incidents -- used to have to do with the severity of the injury. We've changed that to whenever someone has to be transported by emergency medical services from the site, there has to be a hot line report, and the ride has to be shut down. That resulted in more reports and more shutdowns because it was much more objective, but we combined that with making our chief inspector available all the time all through the night. He could get a call at 1:00 in the morning, and did, to listen to exactly what happened. If what happened did not really relate to the ride itself, he could authorize them to begin to continue to operate again. If there was any question in his mind about the mechanics of the ride itself, he would order them to stay shut down and have an inspector there first thing in the morning. On the whole, I think that reporting procedure was well received and makes sure that whenever there is an incident, we're in the loop before the ride is run again if we should be.

Thanks to the law, penalties were increased. We did use those increased penalty powers as a result of various things that happened last summer. We assessed penalties 24 times in a total amount of \$215,000.

ASSEMBLYMAN GEIST: How much?

MR. CONNOLLY: Two hundred and fifteen thousand dollars.

I'll talk about a couple of those incidents near the end of my presentation.

We implemented the rider responsibility aspect of the new law, which provides for the posting of signs at all of the parks notifying the riders that if they misbehave, and a certain amount of incidents are related to rider misbehavior, that they are subject to a complaint and a filing of a disorderly

person charge. We don't have a lot of data on how that worked, and that's probably good since it was meant to be a deterrent. But it was helpful in helping the park operators, from what they tell us, anecdotally, maintain control when the occasional patron gets a little obstreperous.

We instituted operational inspections as a regular part of the Program. The basic inspection-- The law requires each ride to be inspected at least once each year. We, in fact, are able to inspect them between three and four times a year with the current level of staffing. And those additional inspections are what we call operational inspections where our inspectors go out, not in the morning as they do a lot of the other times and sort of poke through the mechanics of the ride, but rather be there when the patrons are riding the ride and the thing is in operation to make sure that the operators are following the proper procedures, that they're trained, and that they know how to operate the ride and how to make sure that the people are properly buckled in and things like that and that the rides are receiving their routine maintenance as they should because each one of these rides have a checklist that is supposed to be gone through every day before it is operated, again something like an airplane. Through those operational inspections, we can make sure that that is really being done and not just on paper -- by checking, ourselves the things that should have been checked by the operator that morning and see if, indeed, it is checked off okay if it is okay. There were some penalties assessed for improper maintenance this past summer.

We've placed a much greater emphasis, as what I've just said indicates, on making sure that the park operators are following the required maintenance and operational directions that they get from the manufacturers

of the rides. There are certain kinds of maintenance that should be performed every day, and there are certain things that operators should know in order to operate the rides safely. And we're placing-- I mentioned earlier that the system really hangs on manufacturers much the way aircraft safety does, and we want to make sure that what the manufacturers are recommending is known to the people on the site and that they're following it.

We're also implementing systematic oversight of what is called nondestructive testing. Most of the manufacturers, especially for the larger rides, recommend what's generically referred to as nondestructive testing. There is about a half-a-dozen different ways you can do it. You do it with X rays and ultrasounds and certain kinds of powders and things. But the bottom line of what it is looking for is metal fatigue and identifying incipient metal fatigue before the metal breaks. And that is the mode of failure of anything constructed of metal that is loaded cyclically. Eventually, the metal fatigues, and when it does it goes like that. (witness snaps fingers) But by careful nondestructive testing, you can anticipate that. If you test the key components of the ride, it will never break because when it's getting toward that point, you'll discover it and you can replace the part.

All of the manufacturers, as I said, have some recommendations for that sort of testing. And what we're making sure is that we know what all those recommendations are and our inspectors that are in a position to, when they do their inspections, make sure that the ride operator also knows what they are and the ride operator has been doing them.

The last area that we're getting into, and I think it's something that we're going to need to get into, is making sure that there is adequate



training available for the people who actually operate the rides. I'm not referring to the attendant who is taking your ticket and letting you in and out of the gate. But every ride has someone who is responsible for it, who's supposed to know all the ins and outs and the mechanics of it and is supposed to make sure that it receives its proper maintenance -- supposed to make sure that the attendants do know what they're doing. And we're beginning to institute training programs for those people. I think, over the long term, we're going to be looking for those people to be certified in some way as a way to make sure they do take advantage of that training.

The last thing I wanted to do is just share with you our findings on two of the dramatic incidents that occurred last summer because they were instructed to us, and I think they illustrate some of the points I was trying to make about the Program.

The first is the sort of a slingshot ride that was referred to as Ricky's Rocket that was on the Steel Peer in Atlantic City and collapsed early in August. The tower fell. It was sort of a thing with two towers 200 feet high. The ride was between it. And it was sort of a car, and it was attached to the tops of the towers by bungee -- rubber band. Those bands were tightened and then it was sprung, and you would get sprung out sort of like you were shot from a slingshot. One of those towers suddenly collapsed.

We investigated that one very thoroughly. It was quite new. It had only been installed that year. What we discovered is that prior to the transfer of the Program to the Department of Community Affairs, the sound -- the structural soundness of the tower had been certified through the Department of Labor by a private structural engineer. And that was the

approach the Department of Labor took because it didn't have any engineers. The Department of Community Affairs has lots of engineers; I mentioned we assigned three of our engineers to the Program. We subpoenaed that engineer's files and records the next morning and discovered that he had not analyzed the use of the ride in a cyclical way with that -- power gets pulled in and springs out at all. He had analyzed it for wind load. And it was safe for wind load, but it was certainly not safe for the loads that were being placed upon it.

The next thing we discovered is that the towers themselves had never been manufactured for that purpose. They were radio towers. And the alleged manufacturer of the ride, located in Kentucky, had certified that those towers had been properly designed to the engineers certified at the Department of Labor and further had certified -- they were welded towers -- had provided required welding certifications that the towers had been properly welded. Well, it wasn't properly manufactured. They didn't even know how it was manufactured because they just purchased it from a radio tower manufacturer. And in fact, it was not properly welded, and that is why it failed. It broke-- They were triangular towers that broke at the lowest joint on the outside. If you know a little bit about engineering, that's the point of greatest load. After two months, that snapped and down the tower came. The manufacturer had proposed -- those of you who follow these things in the papers -- that that joint be reinforced, which shows how much he knew because then the second joint would have broken. The thing was completely defective.

I mentioned that we're undertaking our own engineering views of these kinds of things, and I'm confident that that sort of thing won't happen

again. But in addition, we did assess \$60,000 in penalties. There were four of these towers. The \$5000 is the maximum the law allows, but \$5000 times four is \$20,000, and we assessed the penalties against the engineer who certified it, against the manufacturer, and against the person who falsely certified the welding.

The second one is -- was the Sea Serpent, sort of a roller coaster, at Morey's Pier in Wildwood that one night just sort of came apart. It was a very dramatic sort of crash. This was a roller coaster type of ride. It did loops among other things, and it could go forwards or backwards. So on each end of the train, it had sort of a little hook device that depending on which way the train was going, would hook into the drive that would pull it up. When it went the other direction the other end would hook into the drive. What caused the accident was that that hook dropped suddenly, engaged the track on which the roller coaster was riding, ripped the undercarriage out of that one particular car. The serious injuries were in that one car. But the ride itself was at the top of the loop when this thing happened, so it just sort of came down very violently until it stopped because the lead car, at that point, didn't have an undercarriage.

The problem there was -- it was pretty difficult to determine because of the amount of the wreckage -- that this arm was held up with four bolts. One of those bolts was never found, one of them was found on the site sheared off, one of them was found bent. And that is what caused the arm to come loose, suggesting that in all probability, one wasn't there, one had come loose, one bent, and the other sheared and the thing came down.

Behind this sort of an arm, where it could pivot, there were two more holes where there should have been safety bolts -- a redundant safety device that would keep it from falling if something had happened. All of the rides are required to have some sort of redundant safety devices. You can't have a situation where failure of one component causes a catastrophe. The safety bolts were missing, but more significantly, all of these bolts, and the checking of these bolts were on the daily checklist provided by the manufacturer. It should have been checked before the ride was run. And even more significantly, the checklist was completed, and it was indicated as okay. Obviously, the check didn't take place, and the okay was not truthful.

That was the conclusion of our investigation. The ride manufacturer undertook an investigation and reached the same conclusion. The ride was manufactured by a company in Holland. There we assessed \$10,000 in penalties, again the maximum allowed; \$5000 for failure to execute the maintenance; and \$5000 for falsifying the maintenance checklist.

The first one relates to the importance of an engineering review of the new rides. The second one relates to the importance of making sure that everyone on site knows the manufacturer's instructions and maintenance checklists and does it. We'll be placing a great deal more emphasis on those issues, and I'm certainly hopeful we won't have a repetition of that sort of thing.

The one incident that the Chairman mentioned in Clementon, which I actually-- Since you mentioned it, I'll just talk about that just a little bit. That was a case of an operator of the ride not following the instructions. The ride was to be brought to a halt at the station, the place where it stops. He

decided on his own that it wasn't a very busy night and he would give the people an extra ride for their money, but the first curve out of the station is sharp, and you can't go through the station at any rate of speed and stay on the track when you go around that first curve. Normally, it would hit that first curve as it was just beginning to accelerate. It jumped the tracks -- left the tracks. And that was very clearly against the ride operational instructions and the training that person had been provided, but that person simply didn't seem to internalize the importance of that training well enough. And again that puts some emphasis on the other point that I made that operator training and some more oversight in making sure that operators are well trained is an important part of ride safety.

With that I'll stop and see if there are any questions.

ASSEMBLYMAN GEIST: Of course there are.

Good afternoon. Thank you. Please calendar September for our return after the summer season.

A couple of questions.

First of all, thanks for your comments on the law. As legislators that initially reviewed this legislation, your favorable comments are appreciated. Obviously, the key is in the implementation.

Can you tell the Committee as to the status of the regulations that the legislation enabled under Section 2 of the new law? Under Section 2, there was to be promulgation of regulations. The legislation referenced your predecessor Department, the Department of Labor. Does the Department of Community Affairs have proposed regulations?

MR. CONNOLLY: They will be in a *New Jersey Register* within the next three or four weeks.

ASSEMBLYMAN GEIST: Can you provide copies of--

MR. CONNOLLY: Absolutely.

ASSEMBLYMAN GEIST: --those regulations to all the members of the Committee?

MR. CONNOLLY: They're part of a much larger proposal that implements many of the things that I've talked about here today, but we will certainly furnish it to you.

ASSEMBLYMAN GEIST: Does the legislation give you enough flexibility in the regulatory process?

MR. CONNOLLY: We think so. We think it's a very good law.

ASSEMBLYMAN GEIST: In terms of the monetary fine-- I'm happy to hear that you maxed them out. I'm glad to see that this is not one where the minimums are the prevailing policy, but you're utilizing the maximums. Is that--

MR. CONNOLLY: We don't assess the maximum every time. The fines that we have assessed have run from a low of \$500 to a high of the \$5000. But we've used the max a fair number of times where we think it's warranted.

ASSEMBLYMAN GEIST: To remind my colleagues, the low used to be the high--

MR. CONNOLLY: Right.

ASSEMBLYMAN GEIST: --in this instance. So this Committee did right by establishing-- The low penalty now used to be the high, so the penalty range has clearly been increased.

MR. CONNOLLY: When you think about the incidents where I described that we had fined the max, I think you would see that \$500 would have been a travesty for those kinds of violations.

ASSEMBLYMAN GEIST: I would like it if you could also look through your contacts within the Administrative Office of the Courts to learn more about the prosecution of reckless riders. It is a new phenomena. I candidly do not know, personally as Chair, of prosecution of reckless riders, but I think there is a deterrent impact of some reports of prosecution of reckless riders. I personally thought I might be prosecuting a reckless rider in Clementon, but ultimately, it was a reckless operator. I appreciate you emphasizing that because maybe we need to look at the law on the reckless operator now that we have capability on reckless--

MR. CONNOLLY: That gentleman was fined \$5000.

ASSEMBLYMAN GEIST: One more question from me, and then I will open it to Assemblyman DeCroce next.

The signs. I personally think it is crystal clear in the law that there is a responsibility for the posting of signs. And I personally believe that if a park doesn't post signs, they can be held responsible, too.

Last year I secured an OLS letter relative to the application on the question about the posting of signs. I assume that that's incorporated in your inspection of the parks.

MR. CONNOLLY: Yes. It is our view that it is clear. We are-- One of the things that's in the rule proposals, that I mentioned a moment ago, is the requirement for the signs and specifically what they should say and require them to specifically reference to statute so that there is no doubt that it is enforceable as a penalty item under the law.

ASSEMBLYMAN GEIST: I wouldn't want to see any reckless rider use the defense that there was no notice through the absence of signs and thus have a defense to conduct that unconscionable.

MR. CONNOLLY: Last summer, because it was new, what we did with the ride operators when we didn't find the signs is we instructed them to obtain them and put them up, but this summer we'll be assessing penalties.

ASSEMBLYMAN GEIST: Through the Chair, please keep written reports about your oversight coming throughout the summer with the anticipation of returning to the Committee in September.

MR. CONNOLLY: Sure.

ASSEMBLYMAN GEIST: Thanks, Director.

Assemblyman DeCroce, do you have a question or comment?

ASSEMBLYMAN DeCROCE: Yes, I do.

Director, first of all, are we, in the law, allowing -- continuing to allow the so-called bungee-type rides? Are they going to be continued under New Jersey law?

MR. CONNOLLY: They're-- Right now, there aren't bungee rides operating in New Jersey.

ASSEMBLYMAN DeCROCE: Are they outlawed or precluded?



MR. CONNOLLY: No, they're not prohibited, but they aren't operating now. The approach-- We had-- In our rule proposal that I just mentioned, we thought about an outright prohibition, but we're concerned that we couldn't sustain that in the court -- that that would be found to be arbitrary and capricious. So instead, what we're working towards is technical requirements having to do with G forces and things like that that would better describe instead of just singling out something by a kind of name. We'd rather describe the problem and prohibit the problem because a bungee ride, just by virtue of having a rubber band as its driving force, could be extremely gentle and no particular problem at all. They frequently aren't. But that's where you get in trouble with the courts in terms of being arbitrary -- use a criteria that is not totally descriptive. So we're, instead, going in the direction of something more objective than just a one-word description.

I must tell you that we do have, before us, an application to rebuild, in essence, the same way the tower rides that failed, but that is receiving extremely close scrutiny.

ASSEMBLYMAN DeCROCE: Maybe we should statutorily put something in the law to preclude these types of rides because, frankly, I don't think these things should be allowed in the State of New Jersey. I really don't.

MR. CONNOLLY: I tend to agree that there is a limit when it is-- For one of these-- For example, we saw in the manufacturer's letters -- one that we're questioning very seriously whether we're going to give it a permit -- that the ride provides you with a six-G thrill.

Now, being something of a student of aircraft-- A jet fighter plane, where national security and life and death are involved, is designed to deal with

8.2 Gs. So I'm not sure six Gs and amusement really belong in the same sentence.

ASSEMBLYMAN DeCROCE: I agree. I think we ought to look at this statutorily to see if there is something we can do about it beyond that.

MR. CONNOLLY: We would be happy to work with you on that.

ASSEMBLYMAN DeCROCE: Thank you.

Beyond that, you're satisfied with the penalties as they presently stand? Frankly, I thought they were kind of light. I mean I know the Committee just went over them and redid them, but--

MR. CONNOLLY: I think that for the second incident \$10,000 was a little light. I think the first one -- there were enough multiple accounts that we were able to run it up a little bit. And I'm not unhappy with having assessed \$60,000 on the first instance.

ASSEMBLYMAN DeCROCE: That's only after a year of these new penalties being in place, right? So we'll see how they look at the end of the summer.

MR. CONNOLLY: Yes.

ASSEMBLYMAN DeCROCE: Training. I can tell you the part of the complaint that I get about these -- certainly these types -- these traveling carnivals -- the operators of some of these rides. Some people are concerned about the type of character these people may have, frankly, as being polite. And there again, in a lot of cases, they seem to be imbibing themselves while operating these rides. That's not every case, but I'm going to tell you it's out there.

MR. CONNOLLY: That's why we believe we need to move in the direction of certification of operators because they're a very key element in the safety. We think more training is the first step. The direction in which we're moving is certification.

ASSEMBLYMAN DeCROCE: Is there any consideration for background checks?

MR. CONNOLLY: We certainly would consider that in the context of certification.

ASSEMBLYMAN DeCROCE: I think that's a good idea. I'd like to know that somebody that's putting a little three- or five-year-old on a ride hasn't had any problem in the past.

MR. CONNOLLY: That they have a responsible past.

ASSEMBLYMAN DeCROCE: Thank you, Director.

ASSEMBLYMAN GEIST: Assemblyman DeCroce, the Chair would welcome you to explore any of these other ideas.

ASSEMBLYMAN DeCROCE: I'm going to.

ASSEMBLYMAN GEIST: Okay. I thought you might. Thank you.

Assemblyman Kramer.

ASSEMBLYMAN KRAMER: Just something that Alex brought up.

There are carnivals all over the place with these nomads, I guess they are. They travel all over the country.

Are there a lot of incidents of accidents? I don't recall that -- hearing that much.

MR. CONNOLLY: Interestingly, because I-- Instinctively, you would think that the traveling rides are more dangerous than the fixed rides, but they're really not. Statically, the records indicate that injuries are sort of equally prevalent. I think that may be because the fixed rides can be much larger and more dramatic. So you would think that a fixed ride would get a better level of maintenance -- on the whole, be better because it was a fixed ride. The fact that some of them can be much more thrilling -- I'm always looking for the right adjective to describe those big ones -- means that the safety record comes out about the same. Carnivals are not statically a great deal more dangerous than fixed amusement parks.

ASSEMBLYMAN KRAMER: One more, Bill. How do you alert the municipalities to the new rules and regulations? Because, frankly, I think a lot of the clerks, in all probability, usually refer whatever people send down to their councilman, mayors, or whatever. But how do you do that? Do you go individually to each community and send a list of rules and regulations so they're familiar with the law?

MR. CONNOLLY: One of the advantages of having the DCA handle a program like this as opposed to the Department of Labor is that we have a very active communication with local code officials. Many of the rides require some sort of a permit. Even the traveling ones need, for the temporary electrical service, some sort of a permit. The other thing we do is, through our Division of Fire Safety, register the traveling carnivals. We get an itinerary from them, and we furnish that itinerary to the fire official in the municipality where it is coming so that they're ready for it.

ASSEMBLYMAN GEIST: Assemblywoman Previte, you have an equal opportunity. Do you have any questions?

ASSEMBLYWOMAN PREVITE: Yes, I do.

I'm curious to know--

You said that the inspection staff had been doubled this year in response to the law. Could you let me know how many inspection staff we have and how that compares to the numbers of amusement rides that are being inspected?

MR. CONNOLLY: We have 11 inspectors and 2 field supervisors who also perform inspections. And there are about 1400 amusement rides that received permits last summer.

ASSEMBLYWOMAN PREVITE: And that includes the carnival ones that we've just been--

MR. CONNOLLY: It includes all of them, all of the fixed ones and all of the carnival ones.

ASSEMBLYWOMAN PREVITE: Do you think that's enough?

MR. CONNOLLY: Yes, we do. We think that getting to them three or four times a year is adequate. We think that having what the inspectors do be more focused on what's really important. That's the direction in which we've been going. It is more important than more inspectors.

ASSEMBLYWOMAN PREVITE: If you had a wish list that could make the law even better than it is as a landmark law, what would you wish it to be changed to, to make it safe -- safer?

MR. CONNOLLY: As I indicated, I think the law itself is pretty good. We've talked about a little bit of things that could fine-tune the law.

Certainly banning a particular kind of ride by legislation rather than by administrative rule, it has more strength, and that's why I would support that because I would feel much better about the Legislature doing it than just us doing it. I think we'd do much better in court.

But the law -- the basic law itself gives us ample authority. It requires an engineering review. That didn't happen before this year because the Department of Labor wasn't equipped to do it. It requires the permit before the ride can be operated. It has, what are now, pretty substantial penalties. We have the authority to shut down the ride whenever there is any sort of a problem. And it requires a very detailed reporting on any kind of an incident so that we can analyze that and take corrective action. It isn't always dramatic.

Let me give you an example of how that incident reporting works for us. We've all seen these little inflated rooms where little kids jump up and down. It's like on a mattress. They're referred to as a bounce. Through our incident reporting system, last summer we got what we thought was an unreasonable number of injuries to children on a bounce. We sent an inspector out to find out what was going on. They found that the operator was letting too many children on at once and was allowing children of too much different sizes and ages on it at once, and the little kids were getting hurt. And we were able to correct that.

So I think we've got a good law. It just requires better implementation. I think it's getting better implementation because we're not average in anything else here in New Jersey, and I don't really want to be average in terms of ride safety either.

ASSEMBLYMAN GEIST: Absolutely.

Quickly, following up on the Assemblywoman's question about the inspectors, are they geographically situated so that there is a time sensitivity for immediate responsiveness?

MR. CONNOLLY: We have inspectors all over the state. Like the dramatic incidents I referred to -- we had inspectors on the site within an hour even though both of them occurred late on a weekend night.

ASSEMBLYMAN GEIST: Great.

ASSEMBLYWOMAN PREVITE: I just have one other question, Mr. Chairman.

ASSEMBLYMAN GEIST: Assemblywoman.

ASSEMBLYWOMAN PREVITE: Do you hear of these, dare I use the term, by rats? I mean, do you hear of malfunctions or of unsafe conditions ever by community people phoning into you? I mean, is that a mechanism by which you might get suspicions of an unsafe ride, or is it mainly that you just get the information by your inspections?

MR. CONNOLLY: Only occasionally. The main information we get is through the reporting system.

ASSEMBLYWOMAN PREVITE: Through reporting.

MR. CONNOLLY: I should mention that we have used the penalties in connection with the reporting system, too. We assessed, on five occasions, \$12,000 worth of penalties for people who failed to report. We got a much higher level of reporting this summer than the year before.

ASSEMBLYMAN GEIST: Thank you, Assemblywoman.

The record should reflect that Assemblyman O'Toole is here and has been here.

Assemblyman O'Toole.

ASSEMBLYMAN O'TOOLE: Yes. Thank you, Chairman. First of all I complement you, Chair, for having this public hearing. I think it is a very important area much like the SCI we had last week.

A couple of follow-up questions. I share my colleagues' concerns about the number of inspectors in relationship to the number of landings in amusement parks and carnivals.

Are you telling me that on an average day -- average year, an individual amusement ride will be inspected four times in a given calendar year?

MR. CONNOLLY: That's correct. That will occur within about a five-month period because that's when they're operated.

ASSEMBLYMAN O'TOOLE: Are they all scheduled ahead of time, so the owner or operator is well aware of the inspection?

MR. CONNOLLY: No, the operational inspections are not prescheduled because we want to see what's going on when they don't know we're coming.

ASSEMBLYMAN O'TOOLE: Are the inspections done at night during the operation of the actual amusement park?

MR. CONNOLLY: Yes, nights and weekends. Our staff works a lot of overtime during the summer.

ASSEMBLYMAN O'TOOLE: Okay.



I'm sorry I missed the first couple minutes of your opening here. I don't know if you explained the terms of the doubling of the incidents from 1997 to 1998, and I understand that when you look at the serious and the nonserious, these serious offenses went from 25 in 1997 to 60 in 1998, and the nonserious went from 282 to 582. What do you attribute to the doubling of the nonserious offenses in 1998?

MR. CONNOLLY: Primarily to the emphasis that we placed on the recording-- We clarified, for all of the operators, exactly what we wanted reported. We did assess some penalties for nonreporting. And finally, there was, while it is hard to document, an increase in ridership because last summer was a very good summer in terms of weather.

ASSEMBLYMAN O'TOOLE: It was a better summer. Right. Understood.

Let me ask you this question. There is a comment here from -- I assume it's a report from your office that says that just because you have *X* amounts of incident reports from a given amusement park or carnival, that should not necessarily reflect whether a park or a carnival is -- would be considered safe or unsafe. You have three. You have Mount Creek (phonetic spelling), Morey's Pier, and Clementon Park -- essentially account for half of the incident reports in 1998. And you wouldn't read too far into those statistics?

MR. CONNOLLY: Clementon Park was one of those that was pretty severely penalized for lack of reporting in the past. And we believe they were extremely fastidious about reporting.

The other two contain water parks, and that is an interesting aspect that I didn't mention in my remarks. Although water rides are a small minority of total rides, water rides account for a very high proportion of the minor injuries. In a sense, it's almost inherent. I mean, the experience involved slipping and sliding and you might-- Dislocations and things like that are fairly common, but they do-- That is an area that we believe-- The reports and facts that we're -- and what looks like a disproportionate number of the injuries occur in water parks as opposed to the more traditional amusement rides. That means we need to have a little bit more safety there. And we are, in fact, contemplating adopting some specific operational rules for water parks to try to get it to that.

ASSEMBLYMAN O'TOOLE: I think that that should be done as quickly as possible, and I share the Chairman's concern about seeing these new regulations in effect as soon as possible. If we could have a copy of that--

You talk about developing new regulations for these water parks. I've been to many water parks -- many amusement parks. I'm a great fan. I have been bungee jumping, much to the dismay, I'm sure, of my colleague, Mr. DeCroce. I'm not so sure it's totally unsafe with the right safeguards. But I will tell you that in these water parks you take for granted that it's safe and you're not going to get hurt. By the nature of the water parks, you're going to get bruised and abraded and whatnot in the normal course of things. And without the proper supervision, you could be in harm's way.

I thank you for coming here, and I think your testimony was very informative.

MR. CONNOLLY: Thank you.

ASSEMBLYMAN KRAMER: Just a quick question.

ASSEMBLYMAN GEIST: Assemblyman Kramer.

Thank you, Kevin.

ASSEMBLYMAN KRAMER: I should know this, but I can't remember. Do you get any backup from the local officials, especially for carnivals and things like that? It seems to me that we send out inspectors in the towns--

MR. CONNOLLY: At the local level there is the responsibility of the fire official to go out, there is the electrical inspector for any temporary electrical connections. And there is also a bill that is currently pending -- I'm very embarrassed because I'm forgetting the Assemblyman's name -- he is from Nutley -- which would clarify a little bit further the role of the local code officials in terms of the setup of the ride and any foundations under the rides and things like that because, while we may be able to get there in an hour, they live there. And we try to work very closely with the officials.

ASSEMBLYMAN GEIST: Director, my Geist guys and my colleagues and I thank you for your testimony today, and we look forward to your September return. See you in September as the song used to say. And we wish you a well and safe summer.

MR. CONNOLLY: Thank you very much.

ASSEMBLYMAN GEIST: Thank you.

Today's witness list has been provided to OLS. If there is anyone else desiring to testify today, please let Gregory Williams of OLS know of your interest.

On the witness list today is Edward McGlynn. He is here as Council for the Amusement Association. He is a former Chief of Staff to Governor Kean.

Good afternoon.

**E D W A R D R. M C G L Y N N, ESQ.:** Good afternoon, Mr. Chairman.

**ASSEMBLYMAN GEIST:** Welcome to our Committee, Mr. McGlynn.

**MR. McGLYNN:** Thank you very much.

You're right, my name is Edward R. McGlynn, and I'm actually the lobbyist for the New Jersey Amusement Association, which, Assemblyman Kramer, also includes the Outdoor Amusement Business Association; although they're based out in Minnesota. In fact, the largest carnival operator in the world is located here in the State of New Jersey, which I don't think you probably know.

First off, Chairman, thank you very much for carrying this meeting. In fact, I was unavailable when you were going to have the last meeting on this particular subject because I was at the New Jersey Amusement Association's annual meeting, which is a two-day event in Atlantic City, which I welcome any of you to attend at any time in the future. We commend-- The Association commends your interest in this particular area, and I also want to commend Director Connolly because he has been more than open in his willingness to meet with our Association and, in fact, has permitted our Association, when the Carnival Safety Amusement Advisory Committee has been meeting, to actually go line by line with the proposed regulations.

The Committee members need to know and the public, I'm sure, knows that as far as our membership is concerned, there is nothing more important than the safety of the people that come into our parks. Safety, obviously, comes first. Cleanliness, frankly, comes second. If you do not have a safe park, the chances are that people will not come back to that park. This is a relatively new experience for our members, and I mean that seriously. The interest that the Department of Community Affairs has shown has been much greater than was previously shown, and that is not to be critical of the other Department, but that is to say that I think because of your interest in this, there has been a greater amount of attention that has been shown to the safety of the rides themselves and the riders that use those rides.

We are always mindful that if we have an incident in our park and that incident is one in which a rider is injured, it affects the operation of the entire park and affects who is going to come back again. So we are obviously very concerned about it.

We have again attended the meetings that Mr. Connolly has held. We are looking forward to the promulgation of the regulations. I cannot say that we are going to necessarily agree with every single thing that is in the regulations. We think we are in sync with most of what is in the regulations at the present time. Once they are published, obviously, we will have the opportunity to comment on them. We do appreciate again the fact, and I apologize for being redundant, that we have had the opportunity to provide all the input possible into those regulations.

So with that, I would welcome any questions the Committee might have concerning our members.

ASSEMBLYMAN GEIST: First of all, thanks for being here. And you are certainly a partner in progress in ensuring the safety of the rides, and your commitment, on behalf of the members, is exemplary of the commitment that helped enable the legislation. Let me make it crystal clear-- As you heard me say, "See you in September." We would like your return as well.

We're going to continue the spotlight. I thought the Governor, symbolically, took the demonstration of sensitivity on the safety standard when she did the ceremonial signing at Great Adventure -- fastening the seat belts, pushing the button. I mean, at that level, the chief executive demonstrated her commitment, but we are going to continue the spotlight on the safety component to see that the law is working, to see that the regulations are realistic.

I do recognize that the legislative oversight can be one where we oversee the executive branch to maintain standards of reasonableness to make it such to ensure safety in a reasonable way. And we welcome your involvement. We're going to-- You heard the Director say that the Committee will receive copies of the regulations. We would like to know your input in the regulatory process. Legislative oversight can occur in the regulatory process. We've seen sometimes the commissioner promulgate regulations to the consternation of the public. We've seen that very recently. You know what I'm referring to. So keep us focused on the regulations as you proceed in your advocacy.

Any questions for--

MR. McGLYNN: Mr. Chairman, just one thing, if I may respond.

ASSEMBLYMAN GEIST: Sure.

MR. McGLYNN: Reasonableness is always a concern of ours. And if I may, I just want to direct one thing to Assemblyman O'Toole because he raised it before about the three entities that had the most incidents reported last year. And this, by way of example -- and I don't want to speak on behalf of Morey's, but I am a little bit familiar with their operation.

Morey's has a policy that if there is a scratch, even if it doesn't happen on a ride -- somebody falls on the boardwalk -- that they transport those people to the hospital. That is something that their insurance company has and that is a policy that they've established. They feel that they must report that in accordance with the regulations but don't want to be penalized for having to report that. So I think you have to look at all of the incidents that are being reported and rely upon, hopefully, Director Connolly to say to you, "Don't single out Morey's or single out Clementon Park or single out Great Adventure unless you go into depth as to what those are." So that's--

ASSEMBLYMAN GEIST: One more follow-up-- A New York television network visited me last year about the signage factor. Apparently, there were some within the industry that thought that the law did not require them to post the signs.

What's your understanding as to the implementation by your members of the signage factor?

MR. McGLYNN: I have to say that I think that every operator in New Jersey is a member of our Association, that every operator has been provided, either through me or-- In fact, one of Mr. Connolly's employees, Mr. Richard Obsooth (phonetic spelling), had attended the New Jersey Amusement Association meeting -- also attended the National Amusement meeting which

was held in Dallas this year and spoke there. I think it is pretty well understood by all of my members.

Now, I don't know if there is anybody who is operating out there who is not a member of our Association. I don't think there is. They all understand that signs are required.

ASSEMBLYMAN GEIST: Great.

MR. McGLYNN: And by the way, we also thank you for the rider responsibility. I live in Point Pleasant Beach, which I guess is one of the ways I got to represent this Association. In fact, I believe in Point Pleasant Beach, we have prosecuted people because they, in fact, were acting up on rides last year. And that was very, very helpful to us and something that we wanted. So we thank you for that.

ASSEMBLYMAN GEIST: Good, thank you.

Any other questions for Mr. McGlynn?

Assemblyman O'Toole.

ASSEMBLYMAN O'TOOLE: Thank you.

Good afternoon, Mr. McGlynn. First of all, let me just say that I have great respect for you as a person -- as a professional, and I take very seriously your comments and your representations on behalf of the Carnival Amusement Association. A couple of-- And I certainly understand the policy with Morey's Pier about when a scratch develops on the ride or not. That would drive their numbers to be somewhat artificial and not realistic of the actual occurrences so to speak. And I appreciate that.

In terms of liability insurance on a given ride-- Now, obviously, some of the kiddy rides or the nonmoving rides you would think you don't



need anything beyond a basic liability policy. But do you have any thought whether it be the Sea Serpent or the slingshot or anything else -- whether the \$100,000 liability requirement per ride is adequate, or would you think about -- would you be open to increasing the liability insurance on some of those more dangerous or mobile rides?

MR. McGLYNN: We-- I believe that was part of the discussion that we had at the Amusement Ride Safety Association. There was some discussion about whether or not there was an umbrella policy on each park. I'd be welcome and open to having that discussion. I'm not sure if it's in the final regulation.

Oh, Mr. Connolly left. My apologies.

I think there was discussion about it, Mr. O'Toole -- Assemblyman O'Toole, and there may have been an increase in the overall umbrella-type policy.

ASSEMBLYMAN O'TOOLE: I'd be interested to know that.

And I agree with Chairman Geist, when we do get the new regulations, I would appreciate your Association's comments and concerns beyond what you contributed at the administrative level because, frankly, if they weren't taking it into consideration or we think we can expand on those regulations statutorily, I would love to have your input and the input of your Association.

MR. McGLYNN: I appreciate that, and we will comply, obviously.

ASSEMBLYMAN GEIST: Congratulations on a great summer of 1998, and we wish you a better one in 1999.

MR. McGLYNN: As long as it doesn't rain on weekends everything is fine.

ASSEMBLYMAN O'TOOLE: And when we're in Point Pleasant, we can stop by. Your address is what?

MR. McGLYNN: 709 Cedar-- First street on the right.

ASSEMBLYMAN GEIST: Assemblywoman Previte.

ASSEMBLYWOMAN PREVITE: Yes, I do have a couple of questions, Mr. Chairman.

Could you describe for me the training that is given to an amusement ride operator and how often it is given and is there a refresher required? Help me to see if one of my children was -- or you know, my daughter was an amusement ride operator, what she would have to do to qualify.

MR. McGLYNN: I can say that as far as training is concerned, I know that's going to be addressed in regulations as they are promulgated. Permit me for a moment to talk to you about one particular operator without identifying that operator. And remember, also, if you will, that this is a summertime operation so 90 percent to 95 percent of the individuals that are operators are going to be part-time employees. In some circumstances, the entity that I'm identifying right now has senior citizen operators. And again we don't have the huge rides, shall I call them, at the one that I'm identifying. I mean, we don't have a major roller coaster. We have nothing higher than 35 feet.

But the training that is given starts at the beginning of the summer. And we're talking about the actual operator. I mean, they are

interviewed, made to understand -- we hopefully understand that they are qualified as able to understand how the ride operates. They're told how it's operated, they're taken to the ride, shown how the ride is operated, are directed, and watch the ride operate and then go through a process whereby they operate it themselves. We just don't put them there and say, "Load this thing up. Now you're going to operate it for your first time." And then each ride is checked every morning by this particular operator to make sure that it is mechanically safe. The ride-- The operator-- Again these are smaller rides, if I can refer to them as that. The operator comes on, starts the ride, and operates the ride first without anybody else being on the ride to make sure that everything is operating properly, and then, during the summer -- I don't want to say is given refresher courses but is asked if they've had any problems or are there any difficulties with the ride.

So that's the type of thing that goes on.

ASSEMBLYWOMAN PREVITE: So hands-on-- It's a hands-on at the piece of equipment type of training or orientation.

MR. McGLYNN: In fact, as I understand the regulations-- And one of the things that is going to be required now is a dead man switch on all of the rides. In other words, in order for a ride to -- if it's going to go circular or however it is going to ride -- one would have to keep their hand on a particular -- or foot on a particular foot pedal or hand pedal. If it was removed, in fact, the ride would automatically stop. Some rides that were designed previously were not designed that way. You could turn a key on and the ride would just go on, and somebody could walk away from it and then come back.

But again I must say that understand these are predominately high school kids who rely upon this income during the summer; some college kids, although the college kids always want to work where they can get the tips and more money; and senior citizens. And that's not to denigrate any of those, but this is not a full-time position in which you are paying X number of dollars a year where you can put them through a huge amount of training programs. I mean, they're always cognizant of the safety of the rider. It is one of the things we stress as much as we possibly can. I mean, you get a child on a ride, and the child starts to scream and says, "I want to get off, I want to get off," stop the ride and take the child off. You know, we're not trying to force anybody. This is so people can have a good time. That's what we want to happen.

ASSEMBLYWOMAN PREVITE: So would it be unlikely that a person may have had any orientation to the issues of liability either to themselves or the company?

MR. McGLYNN: I'm not sure how to respond to that. From a standpoint-- Would we have a meeting with them and explain that if certain things happen, you can cause us to loose an awful lot--

ASSEMBLYWOMAN PREVITE: Yes.

MR. McGLYNN: Oh, sure. That's explained to them at the beginning of the season, certainly, and it's said to them during the season.

And frankly, if we have someone-- Again I go back to the safety issue of how important it is to us. If we have somebody that we think, as an employee, is doing something incorrectly, we'll take them off the ride immediately and say, "You can't do this anymore. You have to get somebody-- You have done this improperly. I don't want to say you're fired, but come on.

You have to come in here, and we're going to give you some more training as to how this is supposed to be done."

ASSEMBLYMAN GEIST: Thank you. You're welcome to come back anytime.

MR. McGLYNN: Thank you, sir.

ASSEMBLYMAN GEIST: Thank you, Mr. McGlynn. It's good to see you.

MR. McGLYNN: Good seeing you.

ASSEMBLYMAN GEIST: Very instrumental and interactive of the processing of the legislation was the involvement of the New Jersey Bar Association. That's an understatement. They've provided background information to this Committee about legislation throughout our nation. Their commitment is sensational. And today, from the Bar Association, we have two representatives, Anne P. McHugh of Pellettieri Rabstein and Altman, a well-known law firm, and Todd Sidor from the New Jersey State Bar Association.

Good afternoon, good afternoon. Welcome, and thanks for your continuing commitment to this issue. It's good to see you both.

Welcome, Counsel. Your name for the record as they say.

A N N E P. M c H U G H, ESQ.: I'm Anne McHugh with the firm of Pellettieri Rabstein and Altman.

ASSEMBLYMAN GEIST: Thanks.

T O D D S I D O R: And I'm Todd Sidor with the State Bar Association.

Today we're here to present some more detailed testimony than we presented on February 11. And we're also here to express our appreciation to the Chairman and the Committee for your diligence in proceeding with this

issue. And we hope to work together with this Committee and the executive branch to provide additional safeguards for New Jersey citizens.

MS. McHUGH: If I might-- Let me just begin, Assemblyman Geist, by congratulating you in the valiant efforts and your ever vigilant attitude toward ensuring the safety of New Jersey's children and adults as well as they use these parks and enjoy them in the summer months. I think that what you have done, and the Governor as well, has certainly placed a mark in the minds of everybody of how important this issue is, not just the tragedies that we had before that certainly brought home the message, but the fact that we have to be ever vigilant. I think this Committee is doing that and doing its job. I hope the State Bar continues to work effectively and actively with the Committee, as well as the Department of Community Affairs, in putting more teeth into this remarkable legislation that you have sponsored. So we do appreciate the opportunity, as Todd said.

I just want to highlight a few things. I think we've given you a written report. I don't want to belabor what's in that, particularly. I come at this, so you know, from a background of an attorney who has litigated in the area of these kinds of areas, representing plaintiffs who have been catastrophic -- some of them catastrophically injured and some of them injured in minor ways. I will say to you that generally the plaintiffs bar, in its representation of these individuals, takes only the more serious cases. So the threat of lawsuits is not a realistic one out there, I can assure you. It is an expensive and costly litigation. So if somebody comes into an office with a scratched finger or even a simple fracture, you don't take on Morey's Pier lightly. So I just want the Committee to know that.

The State Bar has--

ASSEMBLYMAN GEIST: If I can interject, I think that's all the more reason why we need the best law to try to diminish even the lesser injuries. So I appreciate the context of your comment, that this is one law that is designed to protect everyone all of the time on any ride from any injury.

MS. McHUGH: Right.

ASSEMBLYMAN GEIST: So I appreciate it in the context that, in light of your testimony, there is even more of a need, as I see it, to protect everyone from any kind of injury.

MS. McHUGH: Right. Precisely.

ASSEMBLYMAN GEIST: But I appreciate you putting your testimony in juxtaposition on the compensation component because my days of hope would be that there would not be so many plaintiffs, that there would not be so many causes of action, that there would not be such a need for compensation, that we would have done such a sensational effort for protection. That's why I applaud the Bar Association because you really are trying to make certain that through safety there is less of a need for litigation to seek compensation for victims.

MS. McHUGH: Absolutely.

ASSEMBLYMAN GEIST: So that's why I'm so proud of the Bar Association for your commitment to this cause, particularly with emphasis on your testimony. I appreciate your personal expertise in this area. The reports, just so those in attendance should know, are impressive.

Thank you.

MS. McHUGH: Thank you, Assemblyman.

One of the areas that I think the State Bar would like to see addressed, and I think it's been commented on by Assemblyman O'Toole and maybe some others here even this afternoon, is the issue of increasing the minimum amount of liability coverage. I think you know now that we have \$100,000 per ride. How that becomes effectuated, I'm not sure, in terms of an actual lawsuit, but I'm here to tell you that \$100,000 is not going to take care of even a serious injury in today's market. And that sum, as I understand it, has been in effect from 1975, so things have changed in the State of New Jersey since 1975, and similarly, I think it's time for this Committee and the Legislature of New Jersey to also look at that issue. What is being recommended by the New Jersey State Bar is that there be an increase to \$1 million per occurrence per ride. I think there have been some-- They're highlighted for you in the written submissions -- are certain other states identified -- Connecticut and New York which carry substantially more coverage than in New Jersey, which we have \$100,000. Connecticut requires up to \$1 million for mechanical rides; New York is \$2.5 million in coverage.

One of the reasons this becomes important, I think, is that it gives you another arm of oversight. An insurance company who is going to underwrite these policies is going to also make sure that the people that they're insuring are doing their job and complying with State regulations. So that just gives you another avenue to ensure that, indeed, these regulations that are in the process of being, as I understand it, developed and the legislation that's already been adopted that they're being enforced and that everything is being complied with. Because that industry is going to be out there, and believe me,



they're not writing \$1 million per person per occurrence coverage if they're not certain that this ride complies with State law.

The other thing is that it also is an incentive to the owners and operators of these rides to have safe rides because their premiums are going to go up if they don't comply or if they have accidents. If injuries occur, their premiums go up. If their premiums go up, they're going to be upset. Okay? They're going to be on their staff. I think we've established this afternoon that that a lot of these rides are not just failures on the part of a design of a particular product, but they're failures on the part of staff -- personnel, high school kids many of them, as was indicated by the industry representative, who are out there and maybe not doing their jobs. So what this will do is, I think, put the onus on the industry who is in the best position to ensure the safety of those children who use those rides. They know, for example, if some guy is a goof-off and doesn't watch and isn't careful, to fire him. Get rid of him. So they're in the best position to do that.

And just like in products liability law, when we say a manufacturer's in the best position to design a safe product and sell and distribute a safe product-- And that's why we put the onus on the manufacturer. I think similarly here, with respect to this industry, the onus should be on them to ensure the safety because they're there every day. The Department of Community Affairs, with all of its inspectors, are not going to be there every day. And they're going to be out there four times a year, which is remarkable and is extraordinary, and it's four times more than they ever were five years ago. We know that. But I think, Assemblywoman Previte, that -- is

this enough? We do worry if it's enough. I mean, anything can happen. So that insurance helps place the onus where it should be.

We've also recommended that the advisory board membership, which I believe is 10 members currently -- that that be expanded to include more representatives from the public sector. Initially, as I understand it, in the communications with the Department of Community Affairs-- Todd has been meeting with them on a regular basis. We had sought -- at least the State Bar had sought that certain representatives from the medical community, public safety sector, etc., be included. I think the Department of Community Affairs felt that that might be too onerous. It's often hard to get people to serve on these boards, but that the Governor be urged in one form or another, whether it be regulatory or otherwise, to expand the board -- bring in more members from the public because I think--

As the composition is presently profiled, it is heavily slanted in favor of the industry, frankly. And we don't dispute that the industry should certainly be there and be a participant. But remember, this Committee is supposed to be the watchdog for safety as I understand it. And they should certainly include, whether it's PTA representatives or people like that, that really have a deep and abiding concern for the safety of our children, who are the ones that are, obviously, using these rides more than anybody else.

ASSEMBLYMAN GEIST: Three of ten, for the record, are "public members."

MS. McHUGH: Okay. I think that actually the State Bar is recommending that it be expanded and that there be more members and that whoever those be, be from the public sector to represent, as I indicated--

ASSEMBLYMAN GEIST: I'm going to ask OLS, with Minority and Majority staff, to get the members' appointment situation reported to all of the Committee members: who are the ten, are there any vacancies, are there any opportunities for public participation?

Okay.

MS. McHUGH: On the issue-- On the reporting aspects of the law and regulations, the State Bar urges this Committee to recommend that the statute be amended to require reporting to be filed with the Department of Community Affairs whenever there is an accident or ride malfunction, irrespective of whether there is an injury or a fatality because if there is some constant problem arising with the ride, being required to report that malfunction, hopefully, will lead the Department of Community Affairs to maybe get an inspector out there to look at that and prevent that injury, whatever it might be. So that it not be restricted simply to injuries and fatalities, but that a repeatedly malfunctioning ride should be looked at -- something to alert the Department that this has got to be looked at.

ASSEMBLYMAN GEIST: As the regulatory process ensues, you're welcome to keep us informed as well as to the need of legislative oversight of the regulations. I assume the regulatory process will address some of these components. Keep us informed.

MS. McHUGH: We will.

ASSEMBLYMAN GEIST: Thanks.

MS. McHUGH: And finally, I think there's other-- I'm not going to mention the bungee jumping. I have to personally agree with one of the Assemblymen here who said, "I don't know we need bungee jumping in New

Jersey,” but we have it, and I don’t know whether the State Bar really has a position on that except to say that we know how serious that is, and you have to be every vigilant with that kind of a ride -- how dangerous it is.

And finally, the only other thing is -- that I want to comment very briefly -- evidence preservation. When there is a serious injury or a fatality associated with a ride, that ride should not only be shut down, as I think the law currently requires, but that that evidence be preserved so that -- not only the evidence itself -- the scene, the mechanics of the ride, but the personnel -- who was operating the ride, what was their job, who was supervising the staff that day -- because I’m here to tell you that these kids come and go, and as an attorney who has litigated in this area, you can’t find anybody. Two summers later they’re gone. So you don’t know whether it was operator failure, supervisor negligence, and that type of thing because these people are not there. So if there is a requirement built into the law by regulation or otherwise that all evidence at the scene be preserved until the Department of Community Affairs or a representative thereof gets out there to do a full accident investigation, I think that will be helpful to everybody. And actually, it may, in many instances, help the industry. It certainly can’t hurt them to know what the facts are.

ASSEMBLYMAN GEIST: Once again we’re going to, together, look at the regulations. You’ve raised very valid points. The legislation does not micromanage. It establishes some broad parameters through the regulatory process, but at the same time, we have the opportunity for legislative oversight. Once you see the regulations, you’re welcome to submit your comments to the

members. I'll be glad to keep this in mind. We're going to continue to focus on the issue.

MS. McHUGH: We appreciate the opportunity to dialog, both with this Committee and with the Department.

ASSEMBLYMAN GEIST: Well, we appreciate your expertise, and we appreciate the Bar's involvement. You're a good team.

MS. McHUGH: Thank you.

ASSEMBLYMAN GEIST: Any questions?

ASSEMBLYMAN O'TOOLE: Just two quick questions.

ASSEMBLYMAN GEIST: Assemblyman O'Toole.

ASSEMBLYMAN O'TOOLE: I agree that in some regards we should be talking about increasing liability, but if you're proposing \$1 million per mechanic -- even the smaller children's rides, the merry-go-rounds and that sort of-- I think at some point it becomes so excessive for the owner or operator that if you're going to charge \$1 million for every mechanical ride--

How do you define mechanical, or how is it currently defined in this legislation?

MS. McHUGH: Well, I think that that's-- What the cost is going to be and how -- actually how onerous that is going to be remains to be seen. If you're talking about the rides with -- the little kiddie rides and you're putting \$1 million per occurrence, the odds of ever reaching that are probably minuscule with those rides.

ASSEMBLYMAN O'TOOLE: But my point is then, why don't you do it \$10 million. Why stop at \$1 million? At some point we recognize there is a line of reasonableness. That's my point. So why would you have, if

there are no occurrences of any accidents on, let's say, a merry-go-round or a small little tugboat ride for children-- Why would we burden the owner or operator with a \$1 million policy, which I imagine has some costs associated with it?

MS. McHUGH: But the cost of the policy is really, I believe, and I'm not an insurance expert here-- The cost of the policy is going to be related to the risk. They'll do a risk analysis -- the insurance company. So if I have a little merry-go-round, and that's my ride, and nobody could really get very seriously hurt on that, the cost of carrying \$1 million is going to be a lot less than say if I have a bungee jump.

ASSEMBLYMAN O'TOOLE: Why are you stopping at \$1 million? Why not follow New York's model of \$2.5 million?

MS. McHUGH: Well, this was the determination of the State Bar as to what would be a reasonable sum of money that the industry would probably accept and be able to live with, I'm sure.

ASSEMBLYMAN O'TOOLE: The State Bar represents the concerns of all residents in New Jersey, correct? Not just plaintiffs, not just-- I imagine owners and operators would fall within--

MS. McHUGH: Absolutely.

ASSEMBLYMAN O'TOOLE: --the purview of your representation.

MS. McHUGH: Absolutely.

ASSEMBLYMAN O'TOOLE: Okay, so it's a balancing act that we're trying to do here.

MS. McHUGH: Yes. They balanced, yes, the industry and the rights of the victims.

ASSEMBLYMAN O'TOOLE: Sure.

MS. McHUGH: And they came up with that sum of money as what they considered to be a reasonable sum.

ASSEMBLYMAN O'TOOLE: Okay. What I'd like to do--

Has George left for--

MR. WILLIAMS: Yes.

ASSEMBLYMAN O'TOOLE: I'd like to see if we can talk about doing a legislative remedy if--

ASSEMBLYMAN KRAMER: Kevin, can I just get a clarification on the insurance?

ASSEMBLYMAN O'TOOLE: Sure, Paul.

ASSEMBLYMAN KRAMER: Do they buy insurance for each individual ride, or do they have a blanket policy for all the rides?

MS. McHUGH: Well, they probably have a blanket policy, but each one of the operators may operate differently.

ASSEMBLYMAN KRAMER: Well, that's what I'm trying to-- The reason I asked that question is that \$100,000 is ridiculous if it's a blanket policy. I mean, I have more insurance on my home, and there is less incident of accidents there. So that's important to me, whether you're talking about \$1 million per ride. I mean if one person has one ride, that is a different story, but I would imagine that they buy a policy -- a blanket policy that includes all the rides. I mean, what's the odds of more than one ride having an accident in one

day or even in one month? You know what I mean? So could somebody clarify that?

Does anybody know?

MR. CONNOLLY: It is per ride.

ASSEMBLYMAN KRAMER: You buy a separate liability policy on each ride.

MR. CONNOLLY: Well, no. If you've got a lot of rides, you may lump them in to make it some sort of umbrella policy and get some sort of a rate consideration part. But the coverage is up to \$100,000 for the ride.

ASSEMBLYMAN O'TOOLE: In answer to Assemblyman Kramer's concern-- I think it's a valid concern. What I would like to see, on behalf of the Chair, since he is no longer here, if we could, in September, have comments or an opinion from Mr. McGlynn's group about the insurance coverage. I'm really concerned about it. I want clarification as to whether these umbrella policies are in effect, whether they be the stop-and-go carnivals or the amusement parks. I would like to have a clarification as to (indiscernible) current requirements-- And I'd also like to know if the owner-- If you are the owner of the land in question and you lease it to an amusement park, do they have any requirements statutorily? And if not, I'd like to look at that because I agree with you on some of these more serious occurrences. Perhaps \$100,000 or \$500,000 is not going to satisfy a tragic or traumatic injury, whether it be death or serious injury. In this day in age, you have \$500,000 and a young child or teenager is injured and unable to work for 40 years, I'm not so sure \$500,000 is really going to cover that expense including medical expenses. But I'd like to look at that come September.



And one other question I have for you is-- Let's talk about the assumption of risk. I've read, very briefly, your prepared comments. I don't quite understand-- When we go-- Like I said, I'm an advocate of the rides. I've been on them for a long time. I go with my child and my nieces and nephews. At some point you, as the rider, assume a certain amount of risk. If you are on a roller coaster and you go up and down and you are going 60 miles an hour around a loop and say you have some neck injury or back injury-- Is there assumption of risk on some of these rides, or is the New Jersey State Bar Association saying that there is no assumption of risk on any rides? And are the owners and operators held-- It's strict liability in a sense.

MS. McHUGH: The truth is, when I reviewed these written comments this morning and I called Todd to discuss that with him-- It seems to me that the law in New Jersey -- that that's an unnecessary provision in there. There is law in New Jersey that would talk about assuming the risk. In other words, there's common law that has developed, and that's part of our tort law, and this is unnecessary. I think Todd agrees with me that that is not something that-- That's something the State Bar should abandon.

ASSEMBLYMAN O'TOOLE: Tell me why though. I don't quite understand. We're looking for clarification. We're looking to fine-tune it. And this is like a high-tech field we're going into. We're talking about \$1 million -- \$1.5 million worth of insurance liability. We're talking about some--

MS. McHUGH: Well, assumption of the risk under our common law is that you voluntarily and unreasonably encounter a known risk. Okay? So if I'm riding a roller coaster and I'm standing up in the seat without my belt on and a bottle of beer in my right hand and I fall out of the roller coaster, I've

assumed the risk, and that issue would go to a jury under our common law. Whether or not Anne McHugh is standing up in a roller coaster going 500 miles an hour with a bottle of beer in her hand and her seat--

ASSEMBLYMAN O'TOOLE: And you are knocked off or injured because of your behavior--

MS. McHUGH: And I'm injured--

ASSEMBLYMAN O'TOOLE: You're saying that would go before the jury.

MS. McHUGH: That issue would go to the jury. But another-- It has to be-- You have to meet the standard of unreasonably and voluntarily encountering a known risk. That is a standard.

On the other hand, if I go down a water slide head first and there is no warning that I can break my neck if I entered that way, no one could accuse me of voluntarily and unreasonably encountering a known risk and I'm injured and I'm a quadriplegic-- The court would not, I would say under those circumstances, permit that issue to be considered by the jury.

So I think that the common law of New Jersey covers, very adequately, the issue of the assumption of the risk on both sides of the equation.

ASSEMBLYMAN O'TOOLE: Could you do me a favor, just for my benefit and I'm sure for the benefit of others? When we meet back in September, if you could just further explain this assumption of risk issue--

MS. McHUGH: I'd be more than happy to.

ASSEMBLYMAN O'TOOLE: I don't-- Even though I'm a practicing lawyer, I don't engage, for the most part, in plaintiff defense work.

I just need a better handle and understanding as to what the common law assumption of risk and how it impacts-- If somebody is injured and they've assumed the risk and they can't get to the jury and they have a right to, I think that they should be allowed to. But, at the same token, if they've assumed unnecessarily some risks and put themselves in harm's way, they shouldn't get to the jury box, if you ask me.

MS. McHUGH: Well, in either case, I would say they probably get to the jury, but the question is whether the jury gets -- in a products liability case. In a products liability case, whether the jury would get to consider assumption of the risk--

But I'll be more than happy to draft something and submit it to the State Bar and that would be laid out.

ASSEMBLYMAN O'TOOLE: Any other questions from the Committee members?

ASSEMBLYMAN KRAMER: Well, frankly, I'd rather get a clarification on the insurance question, if we can, before September.

ASSEMBLYMAN O'TOOLE: Okay, before September.  
Could we just draft a letter?

ASSEMBLYMAN KRAMER: To me, that's an important--

ASSEMBLYMAN O'TOOLE: It's okay with the Chair to ask all parties concerned, particularly the Carnival-Amusement Association, if we can have clarification as to the insurance coverage that is currently required.

ASSEMBLYMAN KRAMER: How it's done.

ASSEMBLYMAN O'TOOLE: How it's done, whether the umbrella policies kick in and covers the \$100,000 per occurrence, what their

position is on the State's position as far as the \$1 million or even our proposition on \$500,000--

Yes. (speaking to member of audience)

UNIDENTIFIED SPEAKER FROM AUDIENCE: We'll do that.

ASSEMBLYMAN O'TOOLE: You'll do that. Great. Terrific.

Anybody else?

MS. McHUGH: Due to that one other question, just as a matter of curiosity-- Are these safari rides covered under these regulations that we're addressing?

ASSEMBLYMAN O'TOOLE: That's a great question.

Do you have any knowledge? Are they covered?

MS. McHUGH: I can't say.

ASSEMBLYMAN O'TOOLE: Mr. Connolly indicates--

MR. CONNOLLY: When you ride through the wild animals?

ASSEMBLYMAN O'TOOLE: Yes.

MR. CONNOLLY: You're going in your own car.

ASSEMBLYMAN KRAMER: That's a different kind of risk.

ASSEMBLYMAN O'TOOLE: Maybe your car insurance or the owner of the safari. It's a very sophisticated field.

ASSEMBLYMAN KRAMER: I remember when the baboons started to rip the tops off the cars. I don't know whatever happened to them.

ASSEMBLYMAN O'TOOLE: Okay, great. We're also going to check with the insurance industry and the regulations.

Anybody else with any questions? (no response)

Thank you very much for your testimony. We look forward to seeing you in September.

Anybody else looking to testify pro or con? Any other news or business? (no response)

Okay, motion to adjourn?

ASSEMBLYWOMAN PREVITE: So moved.

ASSEMBLYMAN KRAMER: Second.

ASSEMBLYMAN O'TOOLE: All in favor? (affirmative responses)

Motion carries.

**(HEARING CONCLUDED)**



APPENDIX







**NJSBA Testimony  
Assembly Labor Committee  
Public Hearing  
On Amusement Park Safety  
March 25, 1999**

**Presented by  
Anne P. McHugh, Esq.**

**NEW JERSEY STATE BAR ASSOCIATION**

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Good Afternoon Chairman Geist, Members of the Committee,  
Ladies and Gentleman. My name is Anne P. McHugh. I am a partner at  
the Princeton firm of Pellettieri, Rabstein & Altman. Thank you for the  
opportunity to appear before you to express the State Bar's views on the  
Carnival and Amusement Park Safety Act of 1975 and P.L. 1998, c. 110  
sponsored by Chairman Geist.

To provide the Committee with some background, the State Bar  
Association has been involved with this issue since the early 1990s. The  
Mel Narol, another member of my firm, serves as the State Bar  
representative on the Recreational Sports and Leisure Activities Liability  
Commission. Mr. Narol regrets his inability to be here today.

In 1996, the State Bar completed an analysis of New Jersey's laws  
as they compare to those of other states for the Commission. We  
presented the Committee with this at its February 11<sup>th</sup> meeting. An  
updated version has been provided to you today.

In late December of 1998, the State Bar asked several legislators to sponsor legislation on the subject of improving amusement park safety. On February 11<sup>th</sup>, Todd Sidor testified regarding Assembly Bill 2801 which would change the membership of the Advisory Board on Carnival-Amusement Ride Safety. I am pleased to tell you that as a result of a meeting we had on March 15<sup>th</sup> Bill Connolly and Richard Osworth we can report in greater detail on certain issues including this legislation. We remain committed to working with this Committee and the Department on this issue.

At this time, I would like to emphasize those suggestions in our revised report which we find most important. The revised report includes twelve recommendations, several of which were met by Chairman Geist's law last year, and other which have been addressed by the Department of Community Affairs. The following commentary is meant to address the most important remaining recommendations.

**RECOMMENDATION: Increase Minimum Amount of  
Liability Coverage**

First, the NJSBA believes that the current liability insurance coverage threshold should be increased to reflect increased medical expenses and property repair costs. Most states we examined in the northeast have much higher insurance liability coverage requirements than New Jersey's \$100,000 requirement, with New York requiring up to \$2.5 million of coverage and Connecticut requiring up to \$1 million for mechanical rides. The Commission heard testimony about the severity of some injuries that occur in connection with amusement rides, and this recommendation is important to ensure that the public is protected when these serious injuries occur. In fact, I provided it with some of that testimony based on my experiences as attorney representing injured amusement ride patrons.

The NJSBA recommends increasing the liability coverage threshold to \$1 million per person per ride. This may seem extraordinary, but the

State Bar believes this is necessary so that in the event all of the individuals on the ride are seriously injured they can receive the compensation they are due. Further, New Jersey's regulations for "bungee jumping" require insurance coverage or a bond in the amount of \$1,000,000 for injuries suffered.<sup>1</sup> Excluding bungee jumps, this minimum liability amount has been in existence for all other rides since 1975. It is time for an increase.

**RECOMMENDATION:  
Advisory Board Membership**

As the Committee knows, the New Jersey statute also establishes the Advisory Board on Carnival and Amusement Ride Safety. Regulations may be revised, modified or otherwise changed by the Commissioner of Community Affairs acceptance of a recommendation made by the ten-member Advisory Board on Carnival and Amusement Ride Safety.<sup>2</sup> This Board consists of the following mandatory individuals: a representative of the carnival-amusement ride manufacturers; a representative of the

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<sup>1</sup> N.J.A.C. 5:14-7.6.

<sup>2</sup> New Jersey Statutes 5:3-33.

carnival-amusement owners; an owner or operator of a registered fair; an owner or operator of an amusement park or enterprise; a representative of the insurance underwriters; a licensed professional engineer; three members of the public; and a representative of the Department of Community Affairs.<sup>3</sup>

The NJSBA previously recommended that this Committee provide for specific additional public members to the Board. However, the NJSBA and DCA agreed that finding individuals with specific backgrounds might be difficult. As a result, the legislation rather than being restrictive should be permissive stating that the Governor in making her appointments should consider appointing persons having particular a particular background. Thus, the Governor in making her appointment should consider appointing a consumer advocacy group member with an interest in amusement park safety, a professor or retired judge with familiarity in safety and tort liability issues, a physician with experience and knowledge in connection with trauma injuries resulting from amusement park accidents, and at least one other individual with expertise in safety issues.

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<sup>3</sup> Id. at (a).

## **RECOMMENDATION: Reporting**

New Jersey law provides that the Department of Community Affairs "shall require the immediate reporting, on a form to be provided by the Department, of any accidents resulting in injuries or fatalities incurred during the operation of any carnival-amusement ride."<sup>4</sup>

The NJSBA urges this Committee to recommend that this statute be amended to require that a report be filed with the Department whenever there is an accident or ride malfunction, whether or not that accident results in an injury or fatality. The fact that an accident or ride malfunction occurs, whether or not an injury results, is valuable information. If amusement ride records show a pattern of the ride breaking down or having accidents, the chance of an injury eventually occurring is greater, and appropriate preventive and/or corrective measures should be taken. Without such records, however, it is impossible to determine the need for preventive or corrective measures until it may be too late to

prevent an injury. This information is also helpful to the public, the State of New Jersey and the amusement ride owner/operator.

Current law also states that the Department "may provide for the cessation of any ride whose breakdown or malfunction directly causes *serious injury* to a rider."<sup>5</sup> The NJSBA has previously recommended that the mere operation of a ride that causes any injury, no matter the degree or severity of the injury suffered, is sufficient justification to shut a ride down. This recommendation was based on the fact that a ride which causes a small injury, such as a sprain, could later be responsible for a more serious injury. However, understanding that this could result in onerous application and severe hardship to the amusement park industry and the Department, the NJSBA is attempting to develop a "middle of the road" solution that balances the public's concerns against an amusement parks.

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<sup>4</sup> New Jersey Statutes 5:3-47.

<sup>5</sup> Id.



## **RECOMMENDATION: Accident Reports**

An individual who is allegedly injured on an amusement park ride is required to file an accident report with the amusement park operator within 90 days of the incident or be barred from bringing a lawsuit, provided that appropriate signs were posted.<sup>6</sup> Currently, there are no requirements that an amusement park provide notice of this fact to amusement park patrons of this fact. The NJSBA urges that amusement park owners and operators have an obligation to advise patrons of the 90 day notice requirement on all entry tickets if a permanent facility operating for six months or more annually. Notice should also be posted conspicuously at each ride.

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<sup>6</sup> New Jersey Statutes 5:3-57.

## **RECOMMENDATION: Bungee Jumping**

Pennsylvania has its own code section that deals specifically with the issue of bungee jumping.<sup>7</sup> The statute appears to be thorough and comprehensive. While New Jersey has adequate regulations dealing with bungee jumping, Pennsylvania's appear much more complete in nature not only dealing with a number of specific operational issues, but also detailed requirements for the personnel utilized during ride operation. As a result of these facts, the NJSBA urges the Commission to recommend adoption of regulations in the area of bungee jumping as comprehensive as those adopted by Pennsylvania.

## **RECOMMENDATION: Assumption of risk**

The Annotated Code of Maryland specifically states that the purchase of a ticket to a carnival or an amusement ride is not an assumption of risk by the ticket holder.<sup>8</sup> Maryland requires that this

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<sup>6</sup> Code of Pennsylvania 139a-1 through 71.

<sup>8</sup> Annotated Code of Maryland, Community Affairs, 3-104.

information appear on the back of all tickets. **The NJSBA urges a similar clarification to New Jersey's law in Department regulations.** We understand that to advance a statutory change along these lines would likely be met with significant industry resistance. In either event, the people of New Jersey should understand their rights and responsibilities clearly as they concern amusement parks.

### **RECOMMENDATION: Judicial Review**

If a regulation or action by the Commissioner under this Act poses a hardship to a party, then the party may appeal the regulation to a court of competent jurisdiction.<sup>9</sup> After giving the Commissioner notice and an opportunity for a hearing, the court may stay the order or regulation of the Commissioner if the court finds such action to be proper.<sup>10</sup> Judicial review includes an appeal of an order by the Commissioner to shut down a ride for any reason including danger to the public.<sup>11</sup>

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<sup>9</sup> Annotated Code of Maryland, Community Affairs, 3-206.

<sup>10</sup> Id. at (b)(2).

## RECOMMENDATION: Evidence Preservation

New Jersey should adopt an evidence preservation statute similar to that utilized in Connecticut to require that the scene of an accident be preserved for inspection by the Department of Community Affairs by the owner and amusement ride operator. Make a failure to preserve evidence a criminal offense.

Connecticut requires in the event of a serious injury or death that the commissioner be informed by a report.<sup>12</sup> The commissioner must then investigate the accident scene in all cases.<sup>13</sup> Regarding evidence at the scene “unless otherwise authorized by the commissioner, no amusement ride or device subject to the provisions of this chapter may be operated or altered nor shall it be removed from the location where such injury or death occurred for seventy-two hours after the time of the receipt of the report.”<sup>14</sup>

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<sup>11</sup> Annotated code of Maryland, Community Affairs, 3-405(e).

<sup>12</sup> Connecticut Revised Statutes Section 29-136.

The NJSBA believes an evidence preservation statute should be adopted. Such a statute should not only involve the accident scene, but also the personnel involved at the scene. We discussed this recommendation with the Department and are trying to develop a final suggestion which balances the need for complete investigation for certain injuries, and the need to enable amusement parks to resume operations where the extent of treatment was minor such as the application of a Band-Aid.

This concludes the State Bar's testimony. We are available to answer any questions you might have at this time.

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<sup>13</sup> Id.

<sup>14</sup> Id.



**RECOMMENDATIONS TO THE  
RECREATIONAL SPORTS AND LEISURE ACTIVITIES  
LIABILITY STUDY COMMISSION  
FOR AMENDMENTS AND/OR ADDITIONS  
TO NEW JERSEY LAWS GOVERNING  
AMUSEMENT PARK LIABILITY**

Revised March, 1999

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## EXECUTIVE SUMMARY

The Recreational Sports and Leisure Activities Liability Study Commission was created by then-Governor James Florio's conditional veto of Assembly Bill No. 917, which provided that persons over the age of 13 who participate in amusement rides should be expected to be aware of the inherent risks involved with these rides and assume some responsibility for their own safety. The Commission was charged with examining the rules of liability where recreational activities are concerned, incorporating into the analysis the effectiveness of our comparative negligence statutes, and businesses' continuing obligation to undertake precautions to protect the safety, health and welfare of our citizens.

Listed below are 12 specific recommendations for the Commission to include in its final proposal to the Legislature. These recommendations are the result of surveying other states and comparing their liability and safety statutes with New Jersey's. An explanation of each of the recommendations follows.

### SUMMARY OF RECOMMENDATIONS<sup>1</sup>

1. Add at least one safety expert and more consumer members to the Advisory Board on Carnival and Amusement Ride Safety.
2. The issuance of temporary permits for extended periods of time and require an owner/operator to obtain a full inspection on all rides, or prohibit the issuance of a temporary permit for longer than three months.

**The Department of Community Affairs informed the NJSBA that they have doubled the number of inspectors that they are utilizing and as a result up to four inspections are being conducted on rides annually. As a result, temporary permits have a very short duration. This addresses the State Bar's concern.**

3. Utilize private "qualified inspectors" to perform safety inspections, as in Pennsylvania. Such qualified inspectors could work independently of the state payroll system, contracting directly with amusement parks. Such inspectors should have to meet minimum qualifications, such as having a background in product engineering. This would help reduce the state government's size and costs and eliminate problems of non-inspection due to a lack of resources. In addition, responsibility for inspection would be properly delegated to the insured. Some oversight would be necessary, however, to ensure that public safety interests are maintained.

**The NJSBA strongly supported the enactment of legislation in 1998 increasing the fines and penalties for carnival amusement ride safety violations including the use of a private inspectors.<sup>2</sup>**

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<sup>1</sup> Recommendations numbered in bold "1" are ones in which the NJSBA is still seeking enactment.

<sup>2</sup> P.L. 1998, c. 10. (A-1180)

4. Raise the current liability insurance coverage threshold. Most other states have much higher insurance liability coverage requirements than New Jersey's \$100,000 requirement, with New York requiring up to \$2.5 million and Connecticut requiring up to \$1 million for mechanical rides. The Commission has heard testimony about the severity of some injuries that occur in connection with amusement rides, and this recommendation is important to ensure that the public is protected when these serious injuries occur.
5. Amend current notification requirements to require that the Division of Community Affairs be notified about any malfunction or mechanical breakdown in connection with an amusement ride, or any other type of accident, regardless of whether someone is injured or not.

**The DCA advised the NJSBA that they have issued an advisory to amusement parks that requires the reporting whenever any injury occurs. The NJSBA still urges that amusement parks be required to notify DCA when any ride malfunction occurs, regardless of whether an injury has resulted.**

6. Authorize the shut down of any ride that causes injury, regardless of whether there has been a malfunction or not.
7. Clarify by statute that the purchase of a ticket by a patron does not constitute an assumption of risk by the buyer.
8. Require the posting of a notice to patrons indicating an accident report must be filed within 90 days of any incident.
9. Adopt a more effective schedule of criminal and civil penalties for violation of the "Carnival-Amusement Rides Safety Act," similar to those adopted by the State of Maryland.

**The NJSBA strongly supported the enactment of legislation in 1998 increasing the fines and penalties for carnival amusement ride safety violations.**<sup>3</sup>

10. Adopt standards specific to bungee jumping, using the Pennsylvania law as a model.
11. Establish a judicial review mechanism to appeal regulations and/or orders of the Commissioner of Community Affairs to address hardship situations. The procedure utilized in Maryland can serve as a model.
12. Adopt an evidence preservation statute similar to that utilized in Connecticut to require that the scene of an accident be preserved for inspection by the Department of Community Affairs by the owner and amusement ride operator. Make a failure to preserve evidence a criminal offense.

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<sup>3</sup> P.L. 1998, c. 10. (A-1180)



## SURVEY OF EXISTING LAWS AND EXPLANATION OF RECOMMENDATIONS

### I. Introduction

The Recreational Sports and Leisure Activities Liability Study Commission was created by then-Governor James Florio's conditional veto of Assembly Bill No. 917, which provided that persons over the age of 13 who participate in amusement rides should be expected to be aware of the inherent risks involved with these rides and assume some responsibility for their own safety. The Commission was charged with examining the rules of liability where recreational activities are concerned, incorporating into the analysis the effectiveness of our comparative negligence statutes, and businesses' continuing obligation to undertake precautions to protect the safety, health and welfare of our citizens.

As New Jersey law requires a degree of uniformity between its laws and the laws of other states, the New Jersey State Bar Association undertook an examination of New Jersey's law regulating the amusement park industry as compared to that of other states. This report contains the results of that undertaking. Recommendations for specific amendments to New Jersey law are highlighted in bold throughout the report. The NJSBA urges the Commission to include these recommendations in its final report to the Legislature.

### II. New Jersey Statutes

1. *General Overview/Rulemaking Authority:* In 1975 the Carnival-Amusement Rides Safety Act (the "Act") was signed into law. New Jersey's amusement park industry is regulated under that Act by the Department of Community Affairs which is given authority to promulgate rules and regulations for the safe installation, repair, maintenance, use, operation and inspection of all carnival and amusement rides as the Department may find necessary for the protection of the general public.<sup>4</sup> The Act carefully defines "carnival" or "amusement ride".<sup>5</sup> This law was amended in 1983 by Governor Thomas H. Kean to include water slides exceeding 15 feet in height and any passenger or gravity propelled ride when the ride is located in an amusement area or park which contains other rides subject to this act.<sup>6</sup> In 1992, the Act was further modified to define amusement park rides more generically.<sup>7</sup>

The statute also establishes the Advisory Board on Carnival and Amusement Ride Safety. Regulations may be revised, modified or otherwise changed by the Commissioner of Community Affairs acceptance of a recommendation made by the ten-member Advisory Board on Carnival and Amusement Ride Safety.<sup>8</sup> This Board consists of the following

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<sup>4</sup> New Jersey Statutes 5:3-36.

<sup>5</sup> New Jersey Statutes 5:3-32(a).

<sup>6</sup> Assembly Bill No. 2072, Assembly Community Affairs Committee Statement, L. 1983, c. 274.

<sup>7</sup> New Jersey Statutes 5:3-55.

<sup>8</sup> New Jersey Statutes 5:3-33.

mandatory individuals: a representative of the carnival-amusement ride manufacturers; a representative of the carnival-amusement owners; an owner or operator of a registered fair; an owner or operator of an amusement park or enterprise; a representative of the insurance underwriters; a licensed professional engineer; three members of the public; and a representative of the Department of Community Affairs.<sup>9</sup>

All members of the Board are appointed by the Governor, except the representative from the Department of Community Affairs and Industry, who is appointed by the commissioner.<sup>10</sup> The term of all gubernatorial appointments is four years.<sup>11</sup> The Board may study or request information from the commissioner "on any aspect of the carnival ride safety program, or on any matter relating to the proper conduct and improvement of said program, including its administrative, engineering and technical aspects."<sup>12</sup>

**The NJSBA recommends that the Commission provide for additional public members of the Board. These should include a consumer advocacy group member with an interest in amusement park safety, a professor or retired judge with familiarity in safety and tort liability issues, a physician with experience and knowledge in connection with trauma injuries resulting from amusement park accidents, and at least one other individual with expertise in safety issues.**

**The NJSBA and DCA agreed that finding individuals with specific background might be difficult. As a result, the legislation rather than being restrictive should be permissive stating that the Governor in making her appointments should consider appointing persons having particular a particular background.**

2. *Uniformity/Reasonableness*: New Jersey law requires that the rules and regulations not only be reasonable, but also uniform.<sup>13</sup> Reasonableness is defined as being based upon generally accepted engineering standards, formulas and practices.<sup>14</sup> Insofar as practicable, rules and regulations under this act "shall be uniform with the rules and regulations of other states."<sup>15</sup>

3. *Recordkeeping*: The owner of an amusement ride is required to maintain up-to-date inspection records for each amusement ride.<sup>16</sup> The Department of Community Affairs "may" require a full safety inspection of any ride whose operation results in any injury or death before the operation of such ride may be resumed.<sup>17</sup> Presently, this law is permissive through statute, leaving regulation adoption to the discretion of the Department of

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<sup>9</sup> Id. at (a).

<sup>10</sup> Id.

<sup>11</sup> Id. at (b).

<sup>12</sup> New Jersey Statutes 5:3-35.

<sup>13</sup> New Jersey Statutes 5:3-37.

<sup>14</sup> Id.

<sup>15</sup> Id.

<sup>16</sup> New Jersey Statutes 5:3-46.

<sup>17</sup> Id.

Community Affairs.

4. *Reporting Obligations:* New Jersey law provides that the Department of Community Affairs "shall require the immediate reporting, on a form to be provided by the Department, of any accidents resulting in injuries or fatalities incurred during the operation of any carnival-amusement ride."<sup>18</sup>

**The NJSBA urges the Commission to recommend that this statute be amended to require that a report be filed whenever there is an accident, whether or not that accident results in an injury or fatality.** The fact that an accident occurs, whether or not an injury results, is valuable information. If amusement ride records show a pattern of the ride breaking down or having accidents, the chance of an injury eventually occurring is greater, and appropriate preventive measures should be taken. Without such records, however, it is impossible to determine the need for preventive measures until it may be too late to prevent an injury. **DCA's advisory of June 8, 1998 addresses this issue requiring amusement parks to notify the Department and take certain other specified actions.**

Current law also states that the Department "may provide for the cessation of any ride whose breakdown or malfunction directly causes *serious injury* to a rider."<sup>19</sup> **The NJSBA urges the Commission to recommend that the mere operation of a ride that causes any injury, no matter the degree or severity of the injury suffered, is sufficient justification to shut a ride down, as the cause of an injury may not necessarily be the result of a malfunction or breakdown, but rather a direct result of the proper operation of a ride. Resumption of ride operation should be premised on an inspection which reveals that the operation of the ride is not harmful to the public and that makes specific written findings as to the cause of the injury.**

5. *Accident Reports:* An individual who is allegedly injured on an amusement park ride is required to file an accident report with the amusement park operator within 90 days of the incident or be barred from bringing a lawsuit, provided that appropriate signs were posted.<sup>20</sup> **The NJSBA urges the Commission to recommend that amusement park owners and operators have an obligation to advise patrons of the 90 day notice requirement on tickets if a permanent facility operating for six months or more. Notice should also be posted conspicuously at each ride.**

6. *Insurance Requirements:* An individual operator is required to carry liability insurance coverage or post a bond of at least \$100,000.<sup>21</sup> This amount was set in 1975 and has not been increased since that time. Such insurance must be acquired from one or more insurers acceptable to the State Commissioner of Insurance.<sup>22</sup>

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<sup>18</sup> New Jersey Statutes 5:3-47.

<sup>19</sup> Id.

<sup>20</sup> New Jersey Statutes 5:3-57.

<sup>21</sup> New Jersey Statutes 5:3-50.

<sup>22</sup> Id.

The NJSBA urges the Commission to recommend that the minimum amount of required liability insurance be increased to \$1,000,000 per person per ride. This would ensure that injured individuals are adequately protected by the operators of amusement parks carrying sufficient insurance coverage to meet potential injuries.

7. *Penalties:* An individual interfering or failing to comply with the requirements of this Act is liable for a fine not in excess of \$500.00. This penalty has not been changed since the enactment of the law in 1975.

The NJSBA urges the Commission to recommend that these penalties be increased as a means to ensure compliance and to more adequately reflect the changes in the amusement park industry over the past 20 years. (Fulfilled)

The NJSBA strongly supported the enactment of legislation in 1998 increasing the fines and penalties for carnival amusement ride safety violations<sup>23</sup>

### III. New Jersey Regulations

1. *Overview:* New Jersey's carnival-amusement ride regulations are promulgated pursuant to the "Carnival and Amusement Rides Safety Act."<sup>24</sup> It is significant to note that there is no mention of safety in the subchapter titles of New Jersey's carnival-amusement ride regulations.<sup>25</sup>

The NJSBA urges the Commission to draft regulations specifically designed to address safety concerns on carnival-amusement rides and recommend their adoption.

The NJSBA strongly supported the enactment of legislation in 1998 increasing the fines and penalties for carnival amusement ride safety violations and adding the promulgation of written warnings as a new component of the Department's public safety effort.<sup>26</sup> The State Bar is hopeful that specific regulations will be developed to promote amusement safety.

2. *Inspection:* An amusement ride may not be operated without a permit, and such permits should be renewed annually.<sup>27</sup> A temporary permit may be issued, however, to allow the operation of a ride for the current year until reinspected.<sup>28</sup>

The NJSBA urges the Commission to recommend a prohibition against the issuance of temporary permits with a duration of longer than three months. Presently,

<sup>23</sup> P.L. 1998, c. 10. (A-1180)

<sup>24</sup> New Jersey Statutes 5:3-31.

<sup>25</sup> N.J.A.C. 5:14-1.1

<sup>26</sup> P.L. 1998, c. 10. (A-1180)

<sup>27</sup> N.J.A.C. 5:14-1.8(a).

<sup>28</sup> N.J.A.C.5:14-1.8(c).

the regulations do not address whether temporary permits may be reissued or not. Such a change would ensure that the public is protected against rides that may not have been inspected for almost two years. This amendment would also require the amusement ride owner to be more vigilant in its inspections by requiring that a ride may not operate unless inspected at least once every 15 months at the longest.

**The Department of Community Affairs informed the NJSBA that they have doubled the number of inspectors that they are utilizing and as a result up to four inspections are being conducted on rides annually. As a result, temporary permits have a very short duration. This addresses the State Bar's concern.**

3. *Reporting:* The regulations require that all accidents resulting in injuries or fatalities incurred during the operation of an amusement ride shall be reported to the Division of Workplace Standards.<sup>29</sup>

The NJSBA urges the Commission to recommend that all ride accidents or malfunctions, whether an injury results or not, be required to be reported to the Division and to the Advisory Board on Carnival-Amusement Ride Safety. The fact that an accident occurs on a ride indicates that a potential problem may exist. Therefore, failure to require reporting of this information to the Division hinders possible prevention of a serious injury.

4. *Ride Malfunction:* The regulations require a number of protective measures if the operation of a ride or amusement causes death or serious bodily injury.<sup>30</sup> These include shutting the ride down and not operating or testing the ride until an agent of the Division is present.<sup>31</sup>

The NJSBA urges the Commission to recommend that the protective measures referred to above apply to any ride that has a malfunction, whether or not an individual is injured or dies. Such preventive measures will reduce the likelihood that a serious injury or death will occur, while increasing public confidence in amusement ride safety. Presently, if a major mechanical malfunction occurs, the amusement park operator is under no obligation to contact the Division. The only requirement is to keep such information in the operator's records.<sup>32</sup> Division notification will ensure that major malfunctions are properly diagnosed and repaired.

5. *Insurance/Bond:* New Jersey law requires a bond or insurance in the amount of \$100,000 per ride.<sup>33</sup>

Once again, the NJSBA urges the Commission to recommend that the

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<sup>29</sup> N.J.A.C. 5:14-1.13.

<sup>30</sup> N.J.A.C. 5:14-1.14.

<sup>31</sup> *Id.* at (a).

<sup>32</sup> N.J.A.C. 5:14-1.12(a).

<sup>33</sup> N.J.A.C. 5:14-1.15.

**insurance/bond amount be increased to reflect increased medical and property repair costs. We recommend an increase to \$1,000,000 per person per ride. This bond requirement has not been changed since it was established 20 years ago. In contrast, New Jersey's regulation for "bungee jumping" requires insurance coverage or a bond in the amount of \$1,000,000 for injuries suffered.<sup>34</sup> (It should be noted that this regulation may need clarification because it states that an owner of a bungee jumping amusement ride must comply with other insurance/bond requirements "except that the amount of insurance liability shall not be less than \$1,000,000 for injury suffered by persons participating in a bungee jumping operation.") The NJSBA urges the Commission to recommend that the regulation be amended to read "liability insurance" instead of "insurance liability."**

#### IV. The Law of Surrounding States

##### A. New York

1. *Permits:* New York differs from New Jersey in its requirement that permits must be obtained every year, with no exceptions.<sup>1</sup> Accordingly, New York does not allow temporary permits until a device can be inspected. Further, New York puts the onus on the operator to make the permit application and secure the inspection before operation of the device.<sup>35</sup> New Jersey appears to be more relaxed in its policies by issuing a temporary permit for previously inspected amusement rides until an inspector has had an opportunity to make an inspection.<sup>36</sup> Under current New Jersey regulations, almost two years could pass before there is an inspection.

2. *Insurance:* New York has a much stronger insurance/bond requirement than New Jersey before an amusement ride permit is issued. Under New York law, the owner/lessee of an amusement device "shall furnish the Commissioner [of Community Affairs] with proof that he has purchased insurance or posted cash in the amount of one million dollars per occurrence or a bond in an amount not less than two million five hundred thousand dollars in the aggregate against liability for injuries to persons arising out of use of an amusement device."<sup>37</sup> This is significantly more than New Jersey's requirement of \$100,000 per ride.

3. *Penalties:* New York has penalties for violations of the permit, inspection and insurance/bond requirements of \$2,000 for each day of the violation.<sup>38</sup>

##### B. Pennsylvania

1. *Organization:* The Amusement Ride Inspection Act of Pennsylvania, like New Jersey, regulates recreational sports and amusement activities in a number of different

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<sup>34</sup> N.J.A.C. 5:14-7.6.

<sup>35</sup> Id.

<sup>36</sup> N.J.A.C. 5:14-1.8(c).

<sup>37</sup> New York Compiled Statutes Section 870-f.

<sup>38</sup> New York Compiled Statutes Section 870-j.

statutory titles. Regulations under the Pennsylvania Act are promulgated by various agencies, however. For example, the Department of Labor regulates ski-lifts and other rides,<sup>39</sup> while the Department of Environmental Resources regulates the use of water amusement rides.<sup>40</sup> This system appears to be more efficient for inspection purposes and effective use of resources; however, a uniform department/division regulating all recreational sports and leisure activities industry may be better able to streamline regulation.

2. *Insurance:* Insurance requirements differ slightly from those of New Jersey.<sup>41</sup> First, the Commonwealth of Pennsylvania does not allow for a bond to be posted in lieu of insurance. Second, Pennsylvania's insurance requirements depend upon the classification of the particular ride by the Commissioner of Labor.<sup>42</sup> Rides are divided into two classifications: Class I and Class II. Class I rides require minimum insurance coverage of \$100,000 per occurrence and \$300,000 in the aggregate.<sup>43</sup> Class II rides require insurance coverage of \$250,000 per occurrence and \$500,000 in the aggregate.<sup>44</sup>

3. *Inspections:* The owner or operator of an amusement ride or attraction must engage a qualified inspector certified by the Department of Labor to perform an inspection.<sup>45</sup> The owner or operator must assume all expenses associated with such inspections.<sup>46</sup> A qualified inspector is required to inspect (a) amusement rides or attractions every 30 operating days during the course of the season; (b) a fair, or carnival and attraction before its operation at a new location; and (c) a new or modified amusement ride and attraction before its use by the public begins.<sup>47</sup> The owner/lessee of the amusement ride or attraction must file an affidavit within 48 hours of the inspection, affirmed by the qualified inspector, that the ride or attraction complies with the requirements of law.<sup>48</sup> Notice of such inspection must be posted in public view.<sup>49</sup> Qualified inspectors are certified by the Department of Labor for a three year period after application and testing.<sup>50</sup>

**The NJSBA strongly supports the adoption of a similar system of qualified inspectors in New Jersey. (Fulfilled)**

**The NJSBA strongly supported the enactment of legislation in 1998 increasing the fines and penalties for carnival amusement ride safety violations including the use of a private inspectors**

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<sup>39</sup> 7 Code of Pennsylvania 139-1.

<sup>40</sup> Id. at (7).

<sup>41</sup> 7 Code of Pennsylvania 139.5.

<sup>42</sup> Id. at (a).

<sup>43</sup> Id. at (a)(1).

<sup>44</sup> Id. at (a)(2).

<sup>45</sup> 7 Code of Pennsylvania 139.7.

<sup>46</sup> Id. at (a).

<sup>47</sup> Id. at (b).

<sup>48</sup> 7 Code of Pennsylvania 139.8.

<sup>49</sup> Id. at (c).

<sup>50</sup> 7 Code of Pennsylvania 139.9.

4. *Safety Board*: Pennsylvania has an Advisory Board on Amusement Ride/Attraction Safety consisting of nine members: one mechanical engineer, two members of the public, five industry-related members and one individual appointed by the governor to serve as secretary.<sup>51</sup> This is similar to the makeup of the New Jersey Board.

5. *Accident Reporting*: Under the Pennsylvania reporting statute, if the operation of a ride has resulted in a serious injury or death, that ride may not open until it has been satisfactorily repaired according to the operator's insurer.<sup>52</sup> The insurer is a party in interest since it must pay for any resulting injuries and repairs. By having the insurer approve of any repairs to a ride, an additional level of safety review is imposed, since the insurer is not likely to certify a ride that might prove dangerous to the public and costly to the insurer.

6. *Maintenance*: There are strict standards for the maintenance, testing and inspection of rides based upon manufacturer specifications.<sup>53</sup> The Department of Community Affairs requires each owner/operator to develop its own maintenance program to assure that the amusement rides and attractions work well.<sup>54</sup> In addition, the Code requires that efforts be made at fire protection and prevention.<sup>55</sup> This appears to be a prudent issue left unresolved by many other states in their enactment of statutes regulating the amusement industry.

7. *Bungee Jumping*: Pennsylvania has its own code section that deals specifically with the issue of bungee jumping.<sup>56</sup> The statute appears to be thorough and comprehensive. **The NJSBA urges the Commission to recommend adoption of regulations in the area of bungee jumping as comprehensive as those adopted by Pennsylvania.**

### C. Maryland

1. *Assumption of Risk*: The Annotated Code of Maryland specifically states that the purchase of a ticket to a carnival or an amusement ride is not an assumption of risk by the ticket holder.<sup>57</sup> **The NJSBA urges the Commission to recommend a similar clarification to New Jersey's law.**

2. *Delegation of Inspection Power*: The Commissioner of Community Affairs is authorized to delegate the inspection powers under this Act to a municipal corporation or a political subdivision to carry out the purposes of this Act.<sup>58</sup>

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<sup>51</sup> 7 Code of Pennsylvania 139.1.

<sup>52</sup> 7 Code of Pennsylvania 139.11.

<sup>53</sup> 7 Code of Pennsylvania 139.77.

<sup>54</sup> Id. at (a).

<sup>55</sup> 7 Code of Pennsylvania 139.75.

<sup>56</sup> 7 Code of Pennsylvania 139a-1 through 71.

<sup>57</sup> Annotated Code of Maryland, Community Affairs, 3-104.

<sup>58</sup> Annotated Code of Maryland, Community Affairs, 3-203.



3. *Administrative Search Warrant*: Maryland law empowers all individuals authorized to carry out inspections to seek an administrative search warrant if access to the property to be inspected is denied.<sup>59</sup>

4. *Judicial Review*: If a regulation or action by the Commissioner under this Act poses a hardship to a party, then the party may appeal the regulation to a court of competent jurisdiction.<sup>60</sup> After giving the Commissioner notice and an opportunity for a hearing, the court may stay the order or regulation of the Commissioner if the court finds such action to be proper.<sup>61</sup> Judicial review includes an appeal of an order by the Commissioner to shut down a ride for any reason including danger to the public.<sup>62</sup>

5. *State Amusement Ride Safety Board*: The Act establishes a Board that "shall advise and consult with the Commissioner on reasonable regulations to prevent conditions that are detrimental to the public in their use of amusement attractions."<sup>63</sup> The Board is made up of nine members: 4 members of the general public; one mechanical engineer; and 4 industry representatives.<sup>64</sup> The Governor must appoint the Chair from among the members of the general public.<sup>65</sup>

**The balance achieved by Maryland including as many public members as industry members is a benefit the NJSBA believes could work to improve public confidence in the amusement park industry.**

6. *Inspection*: Inspection must take place at each "amusement attraction area" annually. If an amusement attraction moves, a new attraction is added or an existing attraction is modified, inspection must occur before resumption of operations.<sup>66</sup> A certificate of inspection at a carnival or fair is effective for 30 days, and at an amusement attraction at an amusement park, it is effective for a maximum period of one year.<sup>67</sup>

7. *Insurance*: The amount of insurance required in Maryland is \$350,000 for each amusement attraction that operates by mechanical means and \$200,000 for a flume ride or any other ride.<sup>68</sup> A county may buy insurance on behalf of a nonprofit organization.<sup>69</sup> Self insurance is available for nonprofit organizations meeting certain asset requirements.<sup>70</sup> A bond may not be posted in lieu of insurance.

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<sup>59</sup> Annotated Code of Maryland, Community Affairs, 3-205.

<sup>60</sup> Annotated Code of Maryland, Community Affairs, 3-206.

<sup>61</sup> *Id.* at (b)(2).

<sup>62</sup> Annotated code of Maryland, Community Affairs, 3-405(e).

<sup>63</sup> Annotated Code of Maryland, Community Affairs, 3-307.

<sup>64</sup> Annotated Code of Maryland, Community Affairs, 3-304.

<sup>65</sup> Annotated Code of Maryland, Community Affairs, 3-305.

<sup>66</sup> Annotated Code of Maryland, Community Affairs, 3-402.

<sup>67</sup> *Id.* at (d).

<sup>68</sup> Annotated code of Maryland, Community Affairs, 3-403.

<sup>69</sup> *Id.* at (c).

<sup>70</sup> *Id.* at (d).

8. *Penalties:* In Maryland, any knowingly false statement or representation made by an individual in an application, plan, record, report or other document is punishable by a fine of \$2,500, or six months in prison, or both.<sup>71</sup> Any willful violation of the act that causes death to a member of the public is punishable by a \$2,500 fine or six months in prison, or both, for the first offense and a \$5,000 fine or one year in prison, or both, for a second offense.<sup>72</sup> Civil penalties of \$500 per day are also imposed for a minor violation not resulting in injury, \$1,000 penalty for violations where the amusement owner was aware that such violation could have resulted in death or serious injury, and \$2,000 for an individual who operates an amusement attraction without a certificate of inspection, or willfully violates the Act repeatedly.<sup>73</sup>

D. Delaware

1. *Administration and Enforcement:* The Amusement Ride Safety Inspection and Insurance Act is administered and enforced in Delaware by the Fire Marshall who sets fees and collects applications

2. *Amusement Ride Operation Requirements:* The owner/operator must have a ride inspected at least once a year by the insurer and obtain a certificate of inspection.<sup>74</sup> The owner/operator of a ride must have an insurance policy in effect of at least \$1,000,000 liability coverage for each occurrence or injury.<sup>75</sup>

**This is similar to the NJSBA's proposal of \$1,000,000 insurance coverage per person per ride so that sufficient insurance is available if all of the patrons on a ride were injured in an amusement park accident.**

E. Connecticut

1. *Application:* The Commissioner of Public Safety is responsible for approving applications to do business as an amusement park upon presentation of proof of financial responsibility, that the activity is not inconsistent with the public welfare, morals and safety, and payment of the application fee.<sup>76</sup>

2. *Inspection:* All amusement rides must be inspected and certified for operation within the requirements of state law by approved civil engineers at least once a year, and as often as the Commissioner deems appropriate.<sup>77</sup> Any person aggrieved by a civil engineer

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<sup>71</sup> Annotated Code of Maryland, Community Affairs, 3-501.

<sup>72</sup> Annotated Code of Maryland, Community Affairs, 3-502.

<sup>73</sup> Annotated Code of Maryland, Community Affairs, 3-503.

<sup>74</sup> Delaware Revised Statute Section 6404(1).

<sup>75</sup> Delaware Revised Statutes Section 6404(2).

<sup>76</sup> Connecticut Revised Statutes Section 29-129.

<sup>77</sup> Connecticut Revised Statutes Section 29-131.

failing to grant such certificate of safety may file an appeal to the Commissioner.<sup>78</sup>

3. *Out of State Operators:* A license to operate an amusement ride can not be granted to an out of state owner/operator until such individual has appointed the Secretary of State to be their attorney and to receive all service of process for the purposes of the Act.<sup>79</sup>

4. *Insurance:* Connecticut requires \$1 million liability insurance coverage per accident for bodily injury for each mechanical ride.<sup>80</sup> For all other rides the state requires \$500,000 liability insurance coverage for bodily injury.<sup>81</sup> For public exhibition events the state requires coverage between \$1 million and \$6 million depending upon the size of the event.<sup>82</sup>

5. *Evidence Preservation:* Connecticut requires in the event of a serious injury or death that the commissioner be informed by a report.<sup>83</sup> The commissioner must then investigate the accident scene in all cases.<sup>84</sup> Regarding evidence at the scene “unless otherwise authorized by the commissioner, no amusement ride or device subject to the provisions of this chapter may be operated or altered nor shall it be removed from the location where such injury or death occurred for seventy-two hours after the time of the receipt of the report.”<sup>85</sup>

**The State Bar believes that a requirement of an investigation after each and every injury is necessary in all cases. The NJSBA also believes an evidence preservation statute should be adopted. Such a statute should not only involve the accident scene, but also the personnel involved at the scene including, but not limited to, the ride operator and the operator’s supervisor, as well as, any and all witnesses to the injury or ride malfunction.**

## V. The Law of Major Amusement Park States

The following is an analysis of the amusement park law of two major amusement park states: California and Florida.

### A. California

1. *Governing Law:* In California, the law governing amusements is the Amusement Rides Safety Law.<sup>86</sup>

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<sup>78</sup> Id.

<sup>79</sup> Connecticut Revised Statutes Section 29-138.

<sup>80</sup> Connecticut Revised Statutes Section 29-139.

<sup>81</sup> Id.

<sup>82</sup> Id.

<sup>83</sup> Connecticut Revised Statutes Section 29-136.

<sup>84</sup> Id.

<sup>85</sup> Id.

<sup>86</sup> California Statutes Annotated Section 7900.

2. *Certification:* California law requires a civil or professional engineer to inspect and certify that a particular ride meets the requirements and standards promulgated by the division for amusement rides before a ride's initial use.<sup>87</sup>
3. *Inspection:* Annual amusement ride inspections are required,<sup>88</sup> and a report on all amusement ride inspections must be submitted yearly to the Department of Food and Agriculture.<sup>89</sup> The inspections may take place by safety inspectors hired by the division or by certified insurance inspectors.<sup>90</sup>
4. *Insurance:* No person is permitted to operate an amusement ride in California without first securing liability insurance coverage for injuries suffered on the ride in the amount of at least \$500,000.<sup>91</sup>
5. *Notice of Accident/Injury:* Whenever an accident or injury occurs requiring more than ordinary first aid and treatment, the amusement ride operator must notify the division immediately by phone.<sup>92</sup> Whenever state, county or local police or fire departments are called because of a serious injury, illness or death at an amusement ride or park, the nearest office of the division must be contacted immediately by phone.<sup>93</sup>

B. Florida

1. *Governing Law:* The Florida law regulating amusements is known as the Amusement Ride and Attraction Insurance Act.<sup>94</sup>
2. *Insurance:* Every amusement ride or attraction must carry \$1 million liability insurance coverage or a bond in the same amount for accident or injury to the public.<sup>95</sup>

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<sup>87</sup> California Statutes Annotated Section 7903.

<sup>88</sup> California Statutes Annotated Section 7906.

<sup>89</sup> California Statutes Annotated Section 7904.

<sup>90</sup> California Statutes Annotated Section 7905.

<sup>91</sup> California Statutes Annotated Section 7912.

<sup>92</sup> California Statutes Annotated Section 7914(a).

<sup>93</sup> California Statutes Annotated Section 7914(b).

<sup>94</sup> Florida Statutes Annotated Section 546.001.

<sup>95</sup> Florida Statutes Annotated Section 546.003.

VI. Conclusion

The Recreational Sports and Leisure Activities Liability Study Commission has been charged with an important task that will likely affect the citizens of the state for many years to come. The NJSBA urges the Commission to carefully review the recommendations contained in this report and to consider adopting them for inclusion in the Commission's final report to the Legislature.

The information contained in this report  
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