S T A T E O F N E W Y O R K

8168

2013-2014 Regular Sessions

I N A S S E M B L Y

August 30, 2013

Introduced by M. of A. GANTT -- read once and referred to the Committee on Labor

AN ACT to amend the labor law, in relation to enhanced safety regulations on rides at amusement parks, carnivals, and fairs

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 870-e of the labor law, as amended by chapter 643 of the laws of 1986, subdivisions 1 and 2 as amended and subdivisions 2-b and 2-c as added by chapter 574 of the laws of 1989, subdivision 2-a as amended and subdivision 6 as added by chapter 368 of the laws of 2006, is amended to read as follows:

S 870-e. Inspections. Before a permit may be issued as provided in section eight hundred seventy-d of this article, an inspection of the amusement device, viewing stand or tent shall be made in compliance with the procedures set by the commissioner. Such inspection shall have been conducted within [one year] TWO MONTHS prior to the permit application, unless such period shall have been extended by operation of subdivision four of this section.

1. In the case of a permanent device, viewing stand or tent, the amusement device, viewing stand or tent [must] SHALL be inspected by the commissioner or his authorized representative, or in the city of New York, by the building department, at the time of application for the initial permit. In the case of an amusement device deemed by the commissioner to normally be operated at speeds or with movements creating severe centrifugal forces, the owner or operator making the permit application for such device shall have available for inspection such recommended maintenance and safety schedules or requirements as are supplied by the manufacturer of the device. An initial operating permit shall not be granted in the absence of these documents. Thereafter, the amusement device, viewing stand or tent [must] SHALL be inspected at least [annually] EVERY TWO MONTHS by a licensed architect, professional

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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engineer, qualified inspector of an insurance underwriter, or an inspector approved by the commissioner as a requirement for the issuance of each subsequent permit. Such inspection shall at minimum comply with the requirements of the commissioner, provided that for amusement devices, at the time of each such [annual] TWO MONTH inspection, the owner or operator of such device shall have available for inspection such recommended maintenance and safety schedules or requirements as are supplied by the manufacturer of the device and shall have available documentation that such maintenance and testing as are called for by the device manufacturer have been performed during the term covered by the previous operating permit. No subsequent operating permit shall be granted in the absence of these documents. An affidavit of the [annual] TWO MONTH inspection shall be filed with the commissioner.

2. In the case of a temporary device, viewing stand or tent, upon first entry into the state, the amusement device, viewing stand or tent [must] SHALL be inspected by the commissioner or his authorized representative for the permit to be issued. In the case of a temporary amusement device deemed by the commissioner to normally operate at speeds or with movements creating severe centrifugal forces the owner or operator making the permit application for such device shall have available for inspection such recommended maintenance and safety schedules or requirements as are supplied by the manufacturer of the device. An operating permit shall not be granted in the absence of these documents. Thereafter, the amusement device, viewing stand or tent [must] SHALL be inspected at least [annually] EVERY TWO MONTHS by a licensed architect, professional engineer, qualified inspector of an insurance underwriter, or an inspector approved by the commissioner as a requirement for the issuance of each subsequent permit. Such inspection shall at minimum comply with the requirements of the commissioner, provided that for amusement devices, at the time of each such [annual] TWO MONTH inspection, the owner or operator of such device shall have available for inspection such recommended maintenance and safety schedules or requirements as are supplied by the manufacturer of the device and shall have available documentation that such maintenance and testing as are called for by the device manufacturer have been performed during the term covered by the previous operating permit. No subsequent operating permit shall be granted in the absence of these documents. An affidavit of the [annual] TWO MONTH inspection shall be filed with the commissioner.

2-a. Where such maintenance and safety schedules as are called for in subdivisions one and two of this section do not exist or are not available due to circumstances beyond the control of the owner or operator of an amusement device, the owner or operator shall, within six months of the discovery of the unavailability of such standards, submit to the commissioner a proposed schedule of maintenance for that amusement device consistent with the standards for the testing and maintenance of such devices established in accordance with the rules and regulations promulgated pursuant to subdivision six of this section and shall henceforth be the schedule with which the owner or operator [must] SHALL comply to qualify for [annual] TWO MONTH operating permits.

2-b. None of the provisions contained in subdivision two-a of this section shall be interpreted as to prevent the owner or operator of an amusement device from receiving [an annual] A TWO MONTH permit to operate such device during the proposed maintenance schedule submission process described in such subdivision provided that such owner or opera-

tor meets all the requirements for [an annual] A TWO MONTH operating permit as they exist prior to the effective date of this subdivision.

2-c. The owner or operator of an amusement device shall conspicuously post a sign containing safety guidelines to be followed by patrons while on or in the amusement device and behavior or activities which are prohibited as threats either to the patrons themselves, other patrons or the general public. Such signs shall contain warnings that there are inherent risks in the participation in or on the amusement device, since it is recognized that participation in or on the device may be hazardous regardless of all feasible safety measures that can be undertaken by the device owner or operator; and that there is a duty for the patrons to become apprised of the warnings and the risks inherent in participation in or on the amusement device if the warnings are not obeyed. Prior to participating in or on such amusement device, patrons shall familiarize themselves with the posted safety warnings so that they may make an informed decision of whether to participate in or on the device notwithstanding the risks.

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

4. In the event an operator is unable to secure an inspection by his insurance carrier within [one year] TWO MONTHS from the date of the previous inspection, such previous inspection shall be deemed valid for purposes of this article for a period of thirty additional days, provided such operator made an inspection request to his insurance carrier at least sixty days prior to the inspection anniversary date.

5. No amusement device, viewing stand or tent which fails to pass an inspection shall be operated for public use until it has passed a subsequent inspection.

6. The commissioner shall, in consultation with the carnival, fair and amusement park safety advisory board as established under section eight hundred seventy-n of this article, [as added by a chapter of the laws of two thousand six,] establish rules and regulations providing standards for the design, manufacture, testing, inspection, quality assurance and terminology of amusement devices. The rules and regulations established pursuant to this subdivision shall be consistent with the national standards for amusement devices, as established by the American Society of Testing and Materials.

7. THE COMMISSIONER IS AUTHORIZED TO IMPLEMENT A PROGRAM OF RANDOM AUDITS OR UNANNOUNCED INSPECTIONS FOR COMPLIANCE WITH INSPECTION REQUIREMENTS AND/OR THE PROVISIONS IN THIS SECTION.

8. AN AMUSEMENT DEVICE SHALL BE INSPECTED AND TESTED EACH DAY WHEN IT IS INTENDED TO BE USED.

9. THE INSPECTION AND TEST SHALL BE PERFORMED BY A PERSON EXPERIENCED AND INSTRUCTED IN THE PROPER OPERATION OF THE DEVICE AND SHALL BE PERFORMED BEFORE THE DEVICE IS PUT INTO NORMAL OPERATION.

10. THE INSPECTION AND TEST SHALL INCLUDE THE OPERATION OF CONTROL DEVICES, SPEED-LIMITING DEVICES, BRAKES AND OTHER EQUIPMENT PROVIDED FOR SAFETY. A RECORD OF EACH INSPECTION AND TEST SHALL BE MADE AT ONCE UPON COMPLETION OF THE TEST ON A FORM PROVIDED BY THE COMMISSIONER OR ON A FORM APPROVED BY THE COMMISSIONER WITH THE INFORMATION REQUIRED BY THIS

SECTION AND SHALL BE KEPT WITH THE DEVICE AND AVAILABLE TO THE COMMISSIONER FOR AT LEAST THIRTY DAYS.

11. THIS DAILY MAINTENANCE INSPECTION LOG SHALL BE KEPT FOR EACH RIDE AND SHALL BE SIGNED BY THE INDIVIDUAL CONDUCTING THE INSPECTION. THE INSPECTION ENTRY SHALL INCLUDE, BUT NOT BE LIMITED TO: THE NAME OF THE RIDE; THE PRINTED NAME OF THE INDIVIDUAL REVIEWING THE INSPECTION LOG; THE SIGNATURE OF THE INDIVIDUAL REVIEWING THE INSPECTION LOG; THE DATE AND TIME OF THE INSPECTION; A SUMMARY OF DEFICIENCIES FOUND AND CORRECTED DURING THE INSPECTION OF THE AMUSEMENT DEVICE; THE RESULT OF THE MAINTENANCE INSPECTION. IF THE RIDE HAS BECOME NON-OPERATIONAL FOR ANY PERIOD OF TIME AND AT THE DISCRETION OF THE OWNER, THE OPERATOR SHALL PERFORM A RE-INSPECTION AND DOCUMENT THEIR FINDINGS IN THE INSPECTION LOG BEFORE PLACING THE RIDE INTO OPERATION AGAIN. THE OPERATOR INSPECTION LOG SHALL INCLUDE, BUT NOT BE LIMITED TO: THE NAME OF THE RIDE BEING INSPECTED; THE LEGIBLE NAME AND SIGNATURE OF THE PERSON COMPLETING THE LOG; THE DATE OF THE INSPECTION; A DETAILED LIST AND DESCRIPTION OF ALL ITEMS BEING CHECKED; AND DETAILS OF TESTING WITHIN THE TIMEFRAME SPECIFIED IN THE OPERATING MANUAL OF ALL CONTROL DEVICES, SPEED-LIMITING DEVICES, BLOCK SYSTEM, EMERGENCY BRAKES, AUTOMATIC AND MANUAL LOWERING DEVICES AND ANY OTHER EQUIPMENT PROVIDED FOR SAFETY.

S 2. The labor law is amended by adding a new section 870-p to read as follows:

S 870-P. OPERATIONS. 1. AMUSEMENT DEVICES SHALL BE OPERATED SOLELY BY COMPETENT OPERATORS AT LEAST EIGHTEEN YEARS OF AGE. EMPLOYERS SHALL CHECK PROSPECTIVE OPERATORS' IDENTIFICATIONS BEFORE HIRING OPERATORS.

2. EVERY OPERATOR SHALL HAVE KNOWLEDGE OF THE USES AND FUNCTIONS OF ALL NORMAL AND EMERGENCY OPERATING CONTROLS AND OF THE PROPER USE OF THE AMUSEMENT DEVICES. OWNERS SHALL ENSURE THAT A RIDE OPERATOR HAS READ AND UNDERSTANDS THE MANUFACTURERS' RECOMMENDATIONS FOR THE OPERATION OF THE RIDES AND, IF APPLICABLE, ANY OPERATIONS MANUALS PROVIDED BY THE OWNERS; KNOWS THE SAFETY-BASED LIMITATIONS REGARDING WHO MAY RIDE THE RIDES; IS WELL VERSED ON EMERGENCY PROCEDURES; HAS ADEQUATE TRAINING TO OPERATE THE RIDES; KNOWS HOW TO CONDUCT THE RIDE CHECKS AS REQUIRED BY THE MANUFACTURERS; KNOWS HOW TO VERIFY THAT THE DAILY MAINTENANCE INSPECTION LOG HAS BEEN COMPLETED PRIOR TO OPERATING THE RIDE; AND HAS KNOWLEDGE OF THE USE AND FUNCTION OF ALL NORMAL AND EMERGENCY OPERATING CONTROLS AND THE PROPER USE OF THE RIDES.

3. AN OPERATOR SHALL NOT LEAVE THE RIDES UNATTENDED WITHOUT DISABLING THE CONTROLS SO THAT THE RIDES CANNOT BE STARTED BY UNAUTHORIZED PERSONS. IF THE RIDES ARE LEFT UNATTENDED AND DISABLED DURING AN OPERATIONAL DAY, THE OPERATOR, UPON RETURNING, SHALL RUN A COMPLETE CYCLE OF THE RIDE, PRIOR TO RE-OPENING THE RIDE.

4. THE OPERATOR SHALL CHECK EACH AND EVERY RESTRAINT, CONSTRAINT, SEATBELT, LAP BAR AND ANY OTHER DEVICE USED IN SECURING RIDERS INTO A VEHICLE INDIVIDUALLY TO ASSURE THAT IT IS LOCKED PROPERLY AND THAT THE RIDER FITS PROPERLY IN THE SAFETY SYSTEM.

5. THE OPERATOR OR OPERATOR'S ASSISTANT SHALL CHECK THE HEIGHT, WEIGHT OR SIZE OF RIDERS, AS APPLICABLE WITH THE HEIGHT MARK, SCALE OR OTHER MEANS OF MEASUREMENT PROVIDED BY THE OWNER. WHEN THE WEIGHT OF A RIDER IS USED TO DETERMINE ENTRY TO OR USE OF A RIDE, AN ACCURATE SCALE SHALL BE PROVIDED. WHEN RIDERS ARE OF DISPARATE SIZES, RIDERS SHALL BE PLACED IN THE RIDE SUCH THAT ANY ACTION CAUSED BY CENTRIFUGAL FORCES SHALL PUSH THE WEIGHT OF THE LIGHTER RIDER INTO THE HEAVIER RIDER.

6. AN OPERATOR SHALL SHALL BE IN THE IMMEDIATE VICINITY OF THE OPERATING CONTROLS DURING OPERATION AND NO OTHER PERSON SHALL BE SUFFERED OR PERMITTED TO HANDLE SUCH CONTROLS DURING NORMAL OPERATION. NO OPERATOR

SHALL BE RESPONSIBLE FOR THE OPERATION OF MORE THAN ONE AMUSEMENT DEVICE AT A TIME.

7. OWNERS SHALL CONDUCT CRIMINAL HISTORY INQUIRIES ON ALL INDIVIDUALS WHO ARE CURRENTLY EMPLOYED OR SEEKING EMPLOYMENT AS A CERTIFIED MAINTENANCE MECHANIC, MAINTENANCE TECHNICIAN, RIDE OPERATOR, OR OPERATOR ASSISTANT.

8. OPERATORS MAY NOT OPERATE UNDER THE INFLUENCE OF DRUGS OR ALCOHOL.

9. THE OWNER SHALL INSTRUCT ALL OPERATORS TO GIVE THEIR FULL ATTENTION TO ANY RIDE THEY OPERATE, AND OPERATORS MAY NOT LISTEN TO ELECTRONIC DEVICES OR ENGAGE IN HANDHELD ELECTRONIC DEVICES WHILE OPERATING ANY RIDE, UNLESS SUCH DEVICES ARE RELATED TO JOB PERFORMANCE.

10. THE OPERATOR AND ALL OPERATOR ASSISTANTS SHALL HAVE A COMPLETE KNOWLEDGE OF THE OPERATION OF THE RESTRAINT SYSTEM, LAP BAR LOCKING SYSTEM, SEATBELTS, AND THE PROPER WAY TO SEAT A RIDER IN A VEHICLE.

11. THE OPERATOR AND ALL OPERATOR ASSISTANTS SHALL BE TRAINED TO BE AWARE OF THE MOTIONS AND SOUNDS ATTRIBUTED TO THE NORMAL OPERATION OF THE RIDE. THE OPERATOR SHALL BE FAMILIAR WITH HOW THE RIDE LOOKS WHEN IT IS FUNCTIONING NORMALLY, AND BE ALERT TO ANY UNUSUAL CONDITIONS. IF THERE ARE ANY CHANGES IN THE NORMAL OPERATING CONDITION, OPERATION SHALL CEASE AND THE OWNER SHALL BE CALLED IMMEDIATELY. THE OWNER SHALL DECIDE THE APPROPRIATE ACTION TO BE TAKEN.

12. OPERATORS AND OPERATOR ASSISTANTS SHALL KNOW THE WHEREABOUTS OF ALL SAFETY EQUIPMENT SUCH AS FIRE EXTINGUISHERS, EMERGENCY MAIN ELECTRICAL DISCONNECT, LOCK-OUT POINT AND NEAREST TELEPHONE FOR ROUTINE OR EMERGENCY ASSISTANCE.

S 3. The labor law is amended by adding a new section 870-q to read as follows:

S 870-Q. MISCELLANEOUS. 1. EVERY APPLICABLE VENUE SHALL DESIGNATE AN OFFICE OR LOCATION AS A SITE FOR REPORTING ACCIDENTS AND INJURIES. THE DESIGNATED OFFICE OR SITE SHALL BE OPEN AND STAFFED DURING REGULAR BUSINESS HOURS AND SHALL BE CLEARLY DESIGNATED IN WRITING. THE OWNER SHALL DESIGNATE AND IDENTIFY MORE THAN ONE SUCH OFFICE OR LOCATION IF NECESSARY WITHIN THE AMUSEMENT PARK SO THAT NO AREA CONTAINING AMUSEMENT PARK RIDES IS FURTHER THAN REASONABLE WALKING DISTANCE FROM AN OFFICE OR LOCATION.

2. A RIDER SHALL NOT BOARD OR ATTEMPT TO BOARD ANY RIDE IF HE OR SHE IS KNOWINGLY OR RECKLESSLY UNDER THE INFLUENCE OF ANY ALCOHOLIC BEVERAGE OR ANY SUBSTANCE THAT AFFECTS HIS OR HER ABILITY TO SAFELY USE THE RIDE AND ABIDE BY THE POSTED AND STATED INSTRUCTIONS.

3. THE OPERATOR OF THE AMUSEMENT RIDE MAY PREVENT A RIDER WHO IS PERCEPTIBLY OR APPARENTLY UNDER THE INFLUENCE OF DRUGS OR ALCOHOL FROM RIDING ON AN AMUSEMENT RIDE. AN OPERATOR WHO PREVENTS SUCH A RIDER FROM BOARDING A RIDE IN ACCORDANCE WITH THIS SECTION SHALL NOT BE CRIMINALLY OR CIVILLY LIABLE IF THE OPERATOR HAS A REASONABLE BASIS FOR BELIEVING THAT THE RIDER IS UNDER THE INFLUENCE OF SUCH A SUBSTANCE.

4. THE PUBLIC SHALL NOT BE ALLOWED TO ENTER THE AREA IN WHICH ASSEMBLY OR DISASSEMBLY OF AN AMUSEMENT DEVICE IS BEING PERFORMED.

5. UPON THE TRANSFER OF OWNERSHIP OF ANY AMUSEMENT DEVICE, THE OWNER OF THE AMUSEMENT DEVICE BEING TRANSFERRED SHALL NOTIFY THE STATE IN WRITING OF THE TRANSFER, AND SHALL TRANSFER ALL RECORDS PERTAINING TO THAT AMUSEMENT DEVICE TO THE NEW OWNER. THE NEW OWNER SHALL OBTAIN A NEW LICENSE AND PERMIT PRIOR TO OPERATING THE AMUSEMENT DEVICE.

S 4. This act shall take effect immediately.