§ 37.09. Protection of aerial performers from accidental falls. 1. No person shall participate in any public performance or exhibition on a trapeze, tightrope, wire, rings, ropes, poles, or other aerial apparatus which requires skill, timing or balance and which creates a substantial risk to himself or others of serious injury from falling, unless there shall be provided for such performance a safety belt, life-net, or other safety device of similar purpose suitably constructed and placed to arrest or cushion his fall and minimize the risk of such injury. No owner, agent, lessee, manager or other person in charge of a circus, carnival, fair, theatre, moving-picture house, public hall, or other public place of assembly, resort or amusement, shall permit any person to take part in a performance specified herein without providing such safety device. Any such aerial performance or exhibition without such safety device in which the height of possible fall is more than twenty feet, shall be presumed to create a substantial risk of serious injury.

2. The commissioner of labor may make rules supplementary to this section designating safety devices of an approved type, strength and location and otherwise effectuating the purposes hereof. The commissioner may also grant variations pursuant to the provisions of section thirty of the labor law. Violations of this section shall be punishable as provided in section two hundred thirteen of the labor law for violations thereunder.

3. In acting upon an application for a variation, the board may take into consideration the availability, in whole or part, of practicable safety devices for a particular type of performance or exhibition and the history and nature of the accidents incurred in such performance or exhibition. The provisions of subdivision one of this section and the rules of the board issued pursuant to this section shall be inapplicable to any performance or exhibition concerning which a variation has been issued to the extent specified in such variation.