

IS THE GOVERNMENT TAKING YOU FOR A LOOP? WHY THERE NEEDS TO BE NATIONAL REGULATIONS OR STRICTER REGULATIONS IN TEXAS FOR AMUSEMENT PARKS

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I. INTRODUCTION

Caleb Schwab and his family woke up on a warm August morning, ready to enjoy the day cooling off at Schlitterbahn Waterpark in Kansas City, Kansas.¹ Little did they know that Caleb, who was only ten years old, would not survive the day.² That day, Caleb rode the Verruckt, which was a 170-foot-tall waterslide that had been named the world's tallest waterslide at the time and allowed riders to reach speeds of up to seventy miles per hour as they went barreling down the slide.³ As Caleb went speeding down this ride, he was sent airborne and tossed towards the netting meant to keep passengers from falling off the slide.⁴ Unfortunately, the slide tossed him straight into a metal pole and decapitated him.⁵ Other injuries had occurred on this ride before this incident, yet, due to a lack of regulations, the park did not do anything to ensure that the ride would be safe for future passengers.⁶

There are currently no national regulations in the United States for fixed-site amusement and water parks.⁷ States are in charge of setting their own regulations, and many states have vastly different regulations set in place.⁸ In fact, some states have no regulations at all.⁹ These vast differences demonstrate the need for Congress to establish national regulations to avoid state regulation inconsistencies and prevent more accidents from happening like the one Caleb experienced.¹⁰ Congress should develop national legislation for fixed-site amusement and water parks that gives authority back to the Consumer Product Safety Commission (CPSC) because national legislation would help to ensure the safety of citizens going to any park in

1. Jacey Fortin, *Judge Dismisses Charges in Boy's Decapitation on 170-Foot-Tall Water Slide*, N.Y. TIMES (Feb. 24, 2019), <https://www.nytimes.com/2019/02/24/us/water-slide-death-charges.html>.

2. *Id.*

3. *Id.*; Jeff Truesdell, *Kansas Boy, 10, Was Decapitated on Water Slide, but Murder Charges Against Park Are Dismissed*, PEOPLE (Feb. 25, 2019, 3:51 PM), <https://people.com/crime/kansas-boy-decapitated-water-slide-murder-charges-against-park-dismissed/>.

4. Fortin, *supra* note 1.

5. *Id.*

6. *Id.*

7. *Structural Flaws at Amusement Parks Can Be Costly*, WRSMH (May 18, 2018), <https://www.wrslaw.com/blog/premises-liability/structural-flaws-at-amusement-parks/>.

8. *U.S. Federal and State Amusement Ride Regulation*, SAFEPARKUSA, <https://safeparkusa.com/u-s-regulations/> (last visited Mar. 29, 2022).

9. *Id.*

10. Connor Marcus Oehmke, *A Call for National Legislation Regarding Amusement Park Safety*, 38 J. LEGAL MED. 101, 102–03 (2018).

any state.¹¹ In addition to adding back authority to the CPSC for fixed sites, Congress should establish a subcommittee that specializes in knowledge about amusement and water parks to continue researching the best ways to regulate the parks and amend the regulations to accommodate any new findings.¹² The subcommittee will also establish what initial regulations must be enforced across the states.¹³

If Congress does not enact national legislation returning authority to the CPSC to create national regulations, the Texas Legislature should add additional regulations to its current state regulations to mirror some of the provisions of other state regulations.¹⁴ Texas has the fifth highest number of amusement and water parks in the country; yet, the state's regulations are greatly lacking compared to other states with similar amounts of amusement and water parks.¹⁵ These new regulations would require additional inspections and for the inspections to be performed by a state-regulated inspection system.¹⁶

This Comment discusses the issues of unregulated amusement and water parks.¹⁷ Part II provides background on why a lack of national regulations is a problem, including discussing the background of amusement and water parks, major accidents that have happened, and the current regulations at the national level and in different states.¹⁸ Part III proposes national legislation to remedy these issues and discusses opposing views on more regulations.¹⁹ Part IV sets forth the initial national regulations to follow after Congress passes the national legislation.²⁰ Finally, Part V proposes amendments to the Texas regulations currently in place that the Texas Legislature should enact if the national legislation does not pass.²¹

11. See, e.g., H.R. 2861, 112th Cong. (2011).

12. See, e.g., 15 U.S.C. § 2052 (recognizing different subcommittees in charge of different products).

13. See, e.g., *id.* § 2058 (showing authority of different subcommittees under the Act).

14. See, e.g., *The Amusement Ride and Tramway Unit*, CAL. DEP'T OF INDUS. RELS., <https://www.dir.ca.gov/dosh/aro/roffices.htm> (last visited Mar. 29, 2022); FLA. STAT. § 616.242 (2020); *Ride Safe NY*, N.Y. STATE: DEP'T OF LAB., <https://dol.ny.gov/ride-safe-ny> (last visited Mar. 29, 2022); *Carnival and Amusement Ride Safety*, STATE OF N.J. DEP'T OF CMTY. AFFS., <https://www.nj.gov/dca/divisions/codes/offices/rides.html> (last visited Mar. 29, 2022).

15. Arthur Levine, *Find Theme Parks and Amusement Parks by U.S. State*, TRIPSAVVY, <https://www.tripsavvy.com/theme-and-amusement-parks-by-state-3226015> (last updated May 13, 2021).

16. See, e.g., STATE OF N.J. DEP'T OF CMTY. AFFS., *supra* note 14.

17. See discussion *infra* Section III.B.1 (discussing the issues with lack of national regulations).

18. See discussion *infra* Part II (discussing the history of amusement and water parks and current regulations in place nationally and in different states).

19. See discussion *infra* Part III (proposing national legislation for amusement parks and discussing issues with no national regulations).

20. See discussion *infra* Part IV (discussing regulations that should be followed nationally).

21. See discussion *infra* Part V (discussing amendments to the current Texas regulations if national legislation is not passed).

II. AN OVERVIEW OF AMUSEMENT PARK AND WATER PARK SAFETY IN THE UNITED STATES

A. A History of Amusement Parks and Water Parks

The thrills and excitement of amusement and water parks have entertained people around the world for hundreds of years.²² According to the National Amusement Park Historical Association (NAPHA), an amusement park is defined as “[a]n entertainment facility featuring rides, games, food[,] and sometimes shows.”²³ The first operating amusement park in the world was Bakken in Klampenborg, Denmark, which was established in 1583.²⁴ The first amusement park in the United States, established in 1846, was Lake Compounce Amusement Park in Bristol, Connecticut, and is still in operation today.²⁵ Until the 1890s, amusement parks were not how we know them to be today.²⁶ Amusement parks previously used “natural features such as beaches and picnic groves to attract customers.”²⁷ In Chicago, Paul Boyton’s Water Chute was the first venture “to rely solely on mechanical attractions—specifically, America’s first major Shoot-the-Chutes ride.”²⁸ When California’s Disneyland opened in 1955, it set the new standard for amusement parks that led to “theme parks.”²⁹ The NAPHA defines theme parks as “amusement park[s] in which the rides, attractions, shows[,] and buildings revolve a central theme or group of themes.”³⁰ Well-known versions of theme parks are Disneyland, Disney World, Six Flags, and Universal Parks and Resorts.³¹

New Zealand displayed the first water slide in the world in 1906.³² In 1923, Herbert Sellner developed a similar ride in Minnesota, creating the first water slide in the United States.³³ Then, in 1964, George Millay opened the first Sea World in San Diego and “went on to form the first official water

22. See Cassam Looch, *The Oldest Amusement Parks in the World*, CULTURE TRIP (Mar. 30, 2020), <https://theculturetrip.com/europe/denmark/articles/the-oldest-amusement-park-in-the-world/>.

23. *Definitions*, NAT’L AMUSEMENT PARK HIST. ASS’N, <https://www.napha.org/Resources/Facts-Figures/Definitions> (last visited Mar. 29, 2022).

24. *World’s Oldest Operating Amusement Parks*, NAT’L AMUSEMENT PARK HIST. ASS’N, <https://napha.org/LIBRARY/FactsFigures/WorldsOldestOperatingAmusementParks/tabid/70/Default.aspx> (last visited Mar. 29, 2022).

25. *Id.*

26. 130 AM. JUR. *Trials* § 3 (2013).

27. Stan Barker, *Amusement Parks*, ENCYCLOPEDIA OF CHI., <http://www.encyclopedia.chicagohistory.org/pages/48.html> (last visited Mar. 29, 2022).

28. *Id.*

29. *Id.*

30. NAT’L AMUSEMENT PARK HIST. ASS’N, *supra* note 23.

31. *Id.*

32. *History of Waterparks*, GEYSER FALLS WATER THEME PARK, <https://geyserfalls.com/history-of-waterparks/> (last visited Mar. 29, 2022).

33. *Id.*

park located in Orlando, Florida in . . . 1977.”³⁴ Today, North America contains more than 1,000 waterparks which “includ[e] municipal/city-owned pools with waterpark features, as well as corporately owned waterparks, independently owned waterparks, and indoor waterpark resorts/hotels.”³⁵ Water parks include popular attractions such as “water slides, splash pools, wave pools, and much more.”³⁶ The highest concentration of water parks is found in the United States, but thousands of others are spread across the world.³⁷ Water parks can be standalone parks, combined with theme parks, or even simplified with smaller attractions if needed to fit their location.³⁸

There are two different types of amusement and water parks—fixed-site and mobile.³⁹ Fixed-site rides are rides that are permanently affixed to a site.⁴⁰ These rides are found at parks such as Six Flags, Disney World, and Schlitterbahn.⁴¹ Mobile rides are rides “which are moved from site to site.”⁴² Mobile rides are typically found at fairs and carnivals.⁴³

Amusement park and water park numbers in states across the United States vary from zero to thirty-three.⁴⁴ There are currently four states in the United States that do not have any amusement parks or water parks.⁴⁵ There are twenty-five states that have between one and five parks, fourteen states that have between six and ten parks, five states that have between eleven and twenty parks, and two with more than twenty-one parks.⁴⁶ The top five states with the largest number of parks are California with thirty-three, Florida with twenty-five, New York with nineteen, New Jersey with seventeen, and Texas with sixteen.⁴⁷

While there are no exact calculations on how many injuries occur at water parks and amusement parks every year, the International Association of Amusement Parks and Attractions (IAAPA) has attempted to estimate the number of injuries.⁴⁸ The IAAPA conducted surveys from 2003 to 2019 for

34. *Id.*

35. 130 AM. JUR. *Trials* § 3 (2013).

36. GEYSER FALLS WATER THEME PARK, *supra* note 32.

37. *Id.*

38. *Id.*

39. See generally Jennifer Kingsley, *High Tech Hunks of Steel: Fixed-Site Amusement Rides and Safety Under State Regulation*, 4 PITT. J. TECH. L. & POL’Y 1 (2014).

40. Ronald J. Cereola & Reginald Foucar-Szocki, *Fixed Site Amusement Rides: Who Regulates Safety?*, 25 HOSP. REV. 45, 47 (2007).

41. See generally, 130 AM. JUR. *Trials* § 3 (2013).

42. Cereola & Foucar-Szocki, *supra* note 40, at 47.

43. *Id.*

44. See *Amusement Parks by State*, ULTIMATEROLLERCOASTER.COM, <https://www.ultimaterollercoaster.com/coasters/parks/states> (last visited Mar. 29, 2022) [hereinafter *Amusement Parks by State*]; Levine, *supra* note 15.

45. *Amusement Parks by State*, *supra* note 44; Levine, *supra* note 15.

46. *Amusement Parks by State*, *supra* note 44; Levine, *supra* note 15.

47. *Amusement Parks by State*, *supra* note 44; Levine, *supra* note 15.

48. NAT’L SAFETY COUNCIL RSCH. GRP., IAAPA RIDE SAFETY REPORT - NORTH AMERICA – 2019, at 2 (2020), <https://www.iaapa.org/sites/default/files/2020-12/Fixed-Site-Amusement-Ride-Injury-Survey-2019-Update.pdf>.

injuries that occurred at amusement parks but not water parks.⁴⁹ In 2019, the IAAPA sent out surveys to 436 fixed-site amusement facilities in the United States and Canada and received responses from only 177 of these facilities.⁵⁰ Based on these reports, the IAAPA concluded that an estimated 1,294 people were injured on fixed-site amusement park rides in 2019.⁵¹ The injuries reported in these surveys were injuries that “required medical treatment beyond ordinary first aid.”⁵² Of these injuries, eighty-two were serious injuries that resulted “in immediate admission and hospitalization in excess of [twenty-four] hours, for purposes other than medical observation.”⁵³ There are currently an estimated 475 amusement parks and over 1,000 water parks in the United States.⁵⁴ Therefore, the survey conducted by the IAAPA covers only around 12% of the total amusement and water parks in the United States.⁵⁵ In 2016, the CPSC estimated that “emergency room departments saw 30,900 injuries” for both fixed-site and mobile amusement parks.⁵⁶ For Texas, as of June 24, 2021, there have so far been seventeen injuries reported by the Texas Department of Insurance.⁵⁷ Additionally, in 2020 there were fifty-one injuries, and in 2019 there were forty-seven injuries.⁵⁸

B. Major Amusement Park and Water Park Injuries in the United States

While not every injury from amusement and water parks is severe enough to require hospitalization or even to cause the death of someone, there have been many serious injuries due to the lack of regulations.⁵⁹ The following are examples of a few of these incidents that resulted in injuries due to a lack of regulations.⁶⁰

49. *Id.*

50. *Id.*

51. *Id.* at 3.

52. *Id.* at 4.

53. *Id.*

54. Arthur Levine, *The Story of Amusement Parks Is the Story of America*, VOX (Aug. 23, 2021, 8:00 AM), <https://www.vox.com/the-highlight/22621855/theme-park-amusement-park-disney-coney-island>; *Number of Waterparks in the United States and Canada in 2020, By Type*, STATISTA (Oct. 19, 2021), <https://www.statista.com/statistics/574161/number-of-waterparks-by-type-us-and-canada/>.

55. See NAT'L SAFETY COUNCIL RSCH. GRP., *supra* note 48.

56. Victoria Knight, *Amusement Park Linked to Thousands of Injuries in 2016*, *Safety Commission Estimates*, CNN HEALTH (July 28, 2017, 6:40 PM), <https://www.cnn.com/2017/07/28/health/amusement-park-safety-data-2016/index.html>.

57. *Amusement Ride Injury Reports*, TEX. DEP'T OF INS., <https://www.tdi.texas.gov/commercial/lca/mqtrinjury.html> (last visited Mar. 29, 2022).

58. *Id.*

59. See Sarah Kuta & Brittany Alexandra Sulc, *World's Most Horrifying Amusement Park Accidents*, FAR & WIDE (May 2, 2022), <https://www.farandwide.com/s/worst-amusement-park-accidents-5d2b791956534c7a>.

60. See *id.*

In 1984, a woman was thrown from a bobsled car on Disneyland's Matterhorn ride and was hit by the next oncoming bobsled.⁶¹ When the following bobsled hit her, it ran over and decapitated her.⁶² Police were notified of the accident and found her seat belt open on her seat but were unable to determine if it was due to a malfunction or not.⁶³ Three years before the accident, Congress had removed the national authority to regulate fixed-site theme parks, so Disneyland was allowed to self-regulate.⁶⁴ The day after the accident, the ride was up and running again after Disney officials claimed to have checked it for malfunctions.⁶⁵

Another incident at Disneyland happened in 1998 when a "metal cleat ripped free from the side of a ride."⁶⁶ The cleat fell and hit two visitors, causing one a severe head injury resulting in his death.⁶⁷ It was discovered that "the tie line that was supposed to hold the cleat in place was replaced with a rope made of the wrong material to save money."⁶⁸ In addition to the cheaper material, the ship was also approaching the dock too fast, and the cleat could not slow it down.⁶⁹ The investigators of the accident determined that the park had improperly trained the employee to operate the ride.⁷⁰

In Louisiana at the Blue Bayou Water Park/Dixie Landin' Amusement Park, a woman was on the Xtreme coaster when the safety harness that was supposed to hold her in flipped open, and she fell off of the ride to her death in 2010.⁷¹ Four years prior to that accident, a two-year-old boy fell off a ride and broke both his arms and legs at the same park.⁷² The ride did not have any height requirement posted at the time, which caused the accident.⁷³ The same park had another incident the day before the boy broke his arms and legs where a woman was struck in the face by another passenger who was thrown forward and then backward due to the raft's speed.⁷⁴ The ride she was on "was not equipped with any safety restraints, belts, harness [or] protective equipment to prevent an accident of this nature."⁷⁵

61. Katie Dowd, *20 Years Apart, Two Tragic Deaths on Disneyland's Matterhorn*, SFGATE (July 1, 2021), <https://www.sfgate.com/disneyland/article/matterhorn-ride-deaths-disneyland-fatal-accidents-16285220.php>.

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

66. Kuta & Sulc, *supra* note 59.

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. *Woman Dies after Falling from Roller Coaster Ride*, WAFB9 (July 11, 2010, 11:42 PM), <https://www.wafb.com/story/12788151/woman-dies-after-falling-from-roller-coaster-ride/>.

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

In 2021, at Adventureland in Iowa, a raft on a ride overturned with six passengers aboard, resulting in the death of one of the passengers.⁷⁶ The ride used a conveyor belt to move the raft through the rapids.⁷⁷ The ride had just been inspected the day before and was found to be in sound working order; yet, it still malfunctioned.⁷⁸ In addition, this was not the first time this ride had killed someone.⁷⁹ In 2016, the ride jerked a worker and riders off their feet when it unexpectedly began to move.⁸⁰ The worker fell onto the conveyor belt and became trapped between a boat and a concrete wall where his head was repeatedly rammed into the wall until another worker shut down the ride.⁸¹ The worker died a few days later from his injuries.⁸²

Lastly, in Texas, a woman riding the Texas Giant at Six Flags in 2013 slipped out of the cart's restraint and fell more than seven stories.⁸³ She was nearly cut in half when she hit a support beam and then landed on the roof of a tunnel that killed her on impact.⁸⁴ The lap bar on the ride did not properly secure the woman because of her size.⁸⁵ The Six Flags employee operating the ride saw that the lap bar did not seem to be adequately secured but still ran the ride anyway.⁸⁶ The park was previously provided with a test seat for riders to sit in before getting on the ride to check if they fit correctly in the seat, but the park kept it in storage until after the accident.⁸⁷ There were also reports that the ride's warning lights, which alerted the ride operator if there were any issues with the ride, had frequent malfunctions.⁸⁸

C. Current Amusement Park and Water Park Safety Regulations

Regulations for amusement and water parks have changed throughout the years at both the federal and state levels.⁸⁹ In addition, regulations have

76. Ryan J. Foley, *Deadly Accident at Iowa Amusement Ride Is 2nd Since 2016*, AP NEWS (July 5, 2021), <https://apnews.com/article/adventureland-raging-river-accident-273dbf870b1cbab93f92ea1df8bfff413>.

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. Sasha Goldstein, *Roller Coaster Nearly Cuts Texas Woman in Half: Report*, DAILY NEWS (Nov. 12, 2013), <https://www.nydailynews.com/news/national/texas-roller-coaster-cut-woman-article-1.1514874>.

84. *Id.*; *Texas Giant Fatality a Year Ago at Six Flags Could Bring Change*, DALL. MORNING NEWS (July 18, 2014, 11:08 PM), <https://www.dallasnews.com/news/2014/07/19/texas-giant-fatality-a-year-ago-at-six-flags-could-bring-change/>.

85. DALL. MORNING NEWS, *supra* note 84.

86. *Id.*

87. *Id.*

88. *Id.*

89. See discussion *infra* Section II.C.1 (discussing the changes in regulations).

varied drastically from state to state.⁹⁰ The following sections set out the changes that have happened throughout the years with federal regulations, various state regulations, and the current Texas regulations.⁹¹

1. Federal Safety Regulations

The federal government first began regulating consumer safety issues beginning in the late 19th century.⁹² In the 1960s, due to increased casualties and injuries from consumer products, Congress began looking toward a uniform approach to regulating consumer products.⁹³ Congress planned to create an agency that would regulate all products available on the open market to protect the American consumer.⁹⁴ To fulfill this plan, Congress created the CPSC in 1972.⁹⁵ When creating the CPSC, Congress specified four specific goals it wanted the CPSC to achieve:

(1) to protect the public against unreasonable risks of injury associated with consumer products; (2) to assist consumers in evaluating the comparative safety of consumer products; (3) to develop uniform safety standards for consumer products and to minimize conflicting State and local regulations; and (4) to promote research and investigation into the causes and prevention of product-related deaths, illnesses, and injuries.⁹⁶

To create the CPSC, Congress enacted the Consumer Product Safety Act (CPSA).⁹⁷ The CPSA gave the CPSC the authority to develop standards and bans on products.⁹⁸ Due to the uniqueness of the products at amusement parks, “the issue of whether the [CPSC] had jurisdiction over amusement park rides arose.”⁹⁹ After reviewing the statute’s plain language¹⁰⁰ and the legislative history,¹⁰¹ the CPSC’s general counsel determined that amusement park regulations were within the Commission’s jurisdiction.¹⁰²

90. See discussion *infra* Sections II.C.2, II.C.3 (discussing the current regulations among various states and Texas).

91. See *infra* Sections II.C.1, II.C.2, II.C.3 (discussing national and state regulations).

92. Chad D. Emerson, *The Continuing Showdown over Who Should Regulate Amusement Attraction Safety: A Critical Analysis of Why Fixed-Site Amusement Attraction Safety Should Remain State-Governed*, 28 SETON HALL LEGIS. J. 1, 7 (2003).

93. *Id.* at 9–10.

94. H.R. REP. NO. 90-882, at 1925 (1967).

95. Consumer Product Safety Act, 15 U.S.C. §§ 2051–89.

96. *Id.* § 2051.

97. *Id.* §§ 2051–89.

98. See *id.* § 2071.

99. Oehmke, *supra* note 10, at 105.

100. 15 U.S.C. § 2052.

101. See H.R. REP. NO. 92-1153 (1972).

102. Oehmke, *supra* note 10, at 105.

The 1981 amendment to the CPSA removed fixed-site amusement parks from the CPSC's jurisdiction.¹⁰³ In 2007, 2009, and 2011, a house representative introduced the National Amusement Park Ride Safety Act to the House, which proposed adding back amusement and water parks that are permanently fixed to a site to the CPSA.¹⁰⁴ The House did not take any action in 2007 or 2009, but in 2011, the House referred the bill to the House Committee on Energy and Commerce, which then referred the bill to the Subcommittee on Commerce, Manufacturing, and Trade, but no other action has been taken since then.¹⁰⁵

2. Several State Safety Regulations

California currently has the largest number of amusement and water parks in the United States.¹⁰⁶ The Amusement Ride and Tramway Unit in California regulates the safety of amusement park rides in the state, according to the Permanent Amusement Ride Safety Inspection Program established under the California Labor Code.¹⁰⁷ California requires many inspections, including annual, structural, and operational inspections; inspections for new rides; inspections after a major modification; unannounced operational inspections; and inspections after receiving a complaint.¹⁰⁸ The Amusement Ride and Tramway Unit is also responsible for certifying qualified safety inspectors who are in charge of inspecting the ride and approving the schools, and they also approve the schools and training providers who train the qualified safety inspectors.¹⁰⁹ The state has comprehensive government oversight through the Permanent Amusement Ride Safety Inspection Program.¹¹⁰

Florida law requires that any amusement park accident that requires a visitor to be transported to a hospital must be reported to the Department of Agriculture and Consumer Services by telephone within four hours after the accident and followed by a written report within twenty-four hours after the accident.¹¹¹ If an amusement ride is closed due to any mechanical, structural, or electrical defects affecting patron safety, the owner or manager must report the event "to the department by telephone or facsimile within [eight] hours after" closing the ride.¹¹² The owner or manager must then file a written report of the closing to the department within twenty-four hours after the ride

103. H.R. 3745, 97th Cong. (1981).

104. H.R. 2320, 110th Cong. (2007); H.R. 2514, 111th Cong. (2009); H.R. 2861, 112th Cong. (2011).

105. H.R. 2861.

106. *See Amusement Parks by State*, *supra* note 44; Levine, *supra* note 15.

107. CAL. DEP'T OF INDUS. RELS., *supra* note 14.

108. *Id.*

109. *Id.*

110. *Id.*

111. FLA. STAT. § 616.242 (2020).

112. *Id.*

was closed.¹¹³ For any amusement ride involved in an accident resulting in the patron being taken to the hospital or that has a mechanical, structural, or electrical defect that affects the safety of patrons, Florida's Department of Agriculture and Consumer Services may impound the ride involved.¹¹⁴ In addition, the department may impound other rides of similar make and model and test the rides to determine the cause of the accident or defect.¹¹⁵ The owner of the ride must bear the cost of the impoundment and testing.¹¹⁶

The New York State Department of Labor is responsible for enforcing amusement ride safety throughout New York.¹¹⁷ Department of Labor employees perform inspections once a year at fixed-site amusement parks.¹¹⁸ A ride cannot operate unless the ride has received a permit from the Department of Labor.¹¹⁹ Once a ride passes inspection, the Department of Labor issues an inspection tag for the owner to place in a visible spot at the ride's point of entry.¹²⁰

In New Jersey, the Carnival and Amusement Ride Safety Act sets forth the inspection program that is to be performed annually along with other miscellaneous inspections throughout the year.¹²¹ The Bureau of Construction Project Review enforces the regulations established under the Carnival and Amusement Ride Safety Act.¹²² The Carnival and Amusement Ride Safety Act contains "a full engineering staff to review current and new rides for modifications, alterations, and installation of new rides."¹²³ For annual and operational inspections, the state uses licensed field inspectors to perform the inspections timely.¹²⁴ The Carnival and Amusement Ride Safety Act provides for annual inspections, reassembly inspections, acceptance inspections, and operational inspections for a ride to be permitted to operate.¹²⁵

3. *Texas Safety Regulations*

The Amusement Ride Safety Inspection and Insurance Act (the Act) adopted by Texas was established on September 1, 1999, by the Texas Department of Insurance to create regulations for amusement parks in

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

117. N.Y. STATE: DEP'T OF LAB., *supra* note 14.

118. *Id.*

119. *Id.*

120. *Id.*

121. STATE OF N.J. DEP'T OF CMTY. AFFS., *supra* note 14.

122. *Id.*

123. *Id.*

124. *Id.*

125. N.J. ADMIN. CODE § 5:14A-2.11 (2018).

Texas.¹²⁶ The Act requires that a person cannot operate an amusement ride unless they have (1) had the ride “inspected at least once a year by an insurer or a person with whom the insurer has contracted; (2) obtain[ed] a written certificate from the insurer or person with whom the insurer has contracted stating that the amusement ride” was inspected, meets the standards for insurance coverage, and is covered by the required insurance; (3) filed the inspection certificate and insurance policy with the commissioner; and (4) “file[d] with each sponsor, lessor, landowner, or other person responsible for the amusement ride being offered for use by the public a photocopy of the inspection certificate and the insurance policy.”¹²⁷ Texas has no government oversight and only uses private-sector oversight.¹²⁸

Under the Act, inspections are performed by the company insuring the ride or through a person that the insurer contracted with.¹²⁹ Once the ride has been inspected, the Texas Department of Insurance issues an Amusement Ride Compliance Sticker, which states when the inspection certificate expires.¹³⁰ The park owner is to affix the sticker “to a major component of each ride in a location visible to the ride participants.”¹³¹ However, the certificate indicates only that the ride has passed an inspection and is not a guarantee of the safe operation of the amusement ride.¹³² The Act also requires that the rides have specific liability insurance based on what class of ride they are.¹³³ For inspections required by the Act, they

(a) must test for stress-related and wear-related damage of the critical parts of a ride that the manufacturer of the ride determines: (1) are reasonably subject to failure as the result of stress and wear; and (2) could cause injury to a member of the public as a result of a failure. (b) If at any time the inspection reveals that an amusement ride does not meet the insurer’s underwriting standards, the insurer shall notify the owner or operator. (c) If repair or replacement of equipment is required, it is the responsibility of the owner or operator to make the repair or install the replacement equipment before the amusement ride is offered for public use.¹³⁴

There are no other requirements for the annual inspections set forth under the Act.¹³⁵ In addition, there are no other inspections outside of the

126. See TEX. OCC. CODE ANN. § 2151.

127. *Id.* § 2151.101.

128. See SAFEPARKUSA, *supra* note 8.

129. TEX. OCC. CODE ANN. § 2151.101.

130. *Amusement Ride Requirements*, TEX. DEP’T INS., <https://www.tdi.texas.commercial/indexamusement.html> (last updated Sept. 17, 2021).

131. 130 AM. JUR. *Trials* § 8 (2013).

132. *Id.*

133. TEX. OCC. CODE ANN. § 2151.1011.

134. *Id.* § 2151.102.

135. See *id.*

annual inspection required for fixed-site amusement rides, only for mobile amusement rides.¹³⁶

III. CONGRESS SHOULD ENACT LEGISLATION FOR FIXED-SITE AMUSEMENT PARKS AND WATER PARKS

There is currently no national legislation regarding safety for fixed-site amusement parks or water parks.¹³⁷ In addition, not even all fifty states have their own state regulations.¹³⁸ Due to the lack of federal regulations, the federal government is unable to investigate accidents at fixed-site amusement parks, provide accident information to operators of the same rides at other parks so that malfunctions can be fixed, require manufacturers to correct design flaws, or enforce any kind of safety measures on amusement park rides.¹³⁹ Additionally, the vast differences among the state regulations demonstrate a concerning inconsistency.¹⁴⁰

Congress should develop national legislation giving authority back to the CPSC for fixed-site amusement and water parks because federal regulations would ensure the safety of citizens going to any park in any state.¹⁴¹ Additionally, in the national legislation Congress should create a subcommittee to specifically be in charge of amusement park and water park regulations.¹⁴²

A. Proposed Federal Legislation for Amusement Park and Water Park Safety

In 2011, the National Amusement Park Ride Safety Act of 2011 was proposed to the House of Representatives, but the House did not pass it into law.¹⁴³ The purpose of the proposed legislation was to add back fixed-site amusement parks under the jurisdiction of the CPSC.¹⁴⁴ The foundation of the same legislation should be used for a new proposed legislation to Congress with a few alterations established.¹⁴⁵

First, the purpose of the bill should be revised to clarify that the CPSC will have jurisdiction over both amusement and water parks.¹⁴⁶ The

136. *Id.* § 2151.1021.

137. WRSMH, *supra* note 7.

138. SAFEPARKUSA, *supra* note 8.

139. *Why There Aren't U.S. Regulations for Amusement Parks*, WWLP.COM (Aug. 13, 2016, 2:30 AM), <https://www.wwlp.com/news/why-there-arent-u-s-regulations-for-amusement-parks/>.

140. Oehmke, *supra* note 10, at 105.

141. *See, e.g.*, H.R. 2861, 112th Cong. (2011).

142. *See, e.g.*, 15 U.S.C. § 2052 (recognizing different subcommittees in charge of different products).

143. H.R. 2861.

144. *Id.*

145. *See id.*

146. *See id.*

previously proposed legislation only referenced amusement parks, so clarification is needed to ensure that water parks will not be left unregulated.¹⁴⁷

A BILL¹⁴⁸

To restore the jurisdiction of the Consumer Product Safety Commission over amusement park and water park rides which are at a fixed site, and for other purposes.

Second, the title of the previously proposed legislation was the National Amusement Park Ride Safety Act of 2011.¹⁴⁹ This title should be amended to add water parks to ensure that it encompasses water parks as well as amusement parks, and the year needs to be updated to 2022. In addition, the heading of § 2 of the previously proposed legislation should also be revised to add water park rides as the section heading only referenced amusement rides.¹⁵⁰

SECTION 1. SHORT TITLE.

- This Act may be cited as the “National Amusement Park and Water Park Ride Safety Act of 2022.”

SEC. 2. JURISDICTION OVER FIXED SITE AMUSEMENT RIDES AND WATER PARK RIDES.

- Section 3(a)(5) of the Consumer Product Safety Act (15 U.S.C. 2052(a)(5)) is amended by striking “, and which is not permanently fixed to a site. Such term does not include such a device which is permanently fixed to a site.” and inserting a period.

Finally, a third section should be added to establish a committee in charge of implementing what specific regulations would need to be followed by amusement and water park owners once the CPSC is given jurisdiction over fixed sites again.¹⁵¹ Currently, there are other subcommittees created under the CPSA that regulate certain unique products.¹⁵² Amusement and water parks are very unique compared to a lot of the products that the CPSC regulates, so a subcommittee specialized in knowledge would be better suited for establishing what regulations need to be followed for amusement and water parks.¹⁵³ Additionally, because a new § 3 is being added to the proposed legislation, the old § 3 of the previously proposed legislation should be updated to § 4, but no other changes need to be made to that section.¹⁵⁴

147. *Id.*

148. Modeled after the National Amusement Park Ride Safety Act of 2011 proposed as H.R. 2861, 112th Cong. (2011). *Id.* Alterations from the National Amusement Park Ride Safety Act of 2011 are underlined. *See id.*

149. *Id.*

150. *See id.*

151. *See, e.g.*, 15 U.S.C. § 2052 (recognizing different subcommittees in charge of different products).

152. *See id.*

153. *See, e.g., id.* (listing different subcommittees in charge of products under the Act).

154. *See* H.R. 2861.

SEC 3. STATE REGULATIONS

- The following section is added as § 16(a)(3) of the Consumer Product Safety Act (15 U.S.C. 2065):
 - (3) Congress will establish a committee entitled the Committee on Amusement Park Safety that will oversee the specific inspection regulations required for amusement parks and water parks.
 - The Committee on Amusement Park Safety will oversee proposing any future amendments to the national regulations.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

- There are authorized to be appropriated to the Consumer Product Safety Commission \$500,000 for each fiscal year to enable the Commission to carry out the Consumer Product Safety Act as amended by this Act.

B. Lack of Federal Legislation for Amusement Park and Water Park Safety

In 1981, the Senate amended the CPSA to remove fixed-site amusement parks from the jurisdiction of the CPSC.¹⁵⁵ Congress should enact the National Amusement Park and Water Park Ride Safety Act of 2022 to reinstate the CPSC's jurisdiction over fixed-site amusement and water parks.¹⁵⁶

1. Issues with No Federal Regulations

Without any federal legislation over fixed-site amusement and water parks, the government is unable to “investigat[e] accidents at amusement parks, shar[e] accident information with operators of same rides so malfunctions can be fixed, requir[e] manufactures to correct design flaws, and enforc[e] a full range of safety measures on amusement park rides.”¹⁵⁷ Congress should impose national legislation for fixed-site amusement and water parks to ensure uniformity across the United States to establish the level of regulations required for every state.¹⁵⁸ A national uniform legislation would increase the safety of citizens going to any park in any state.¹⁵⁹ The

155. *Id.*

156. *See, e.g., id.* (showing previously proposed legislation attempting to give jurisdiction back to the CPSC).

157. WWLP.COM, *supra* note 139.

158. *See, e.g.,* 15 U.S.C. § 2058 (establishing regulation standards for different products at a national level).

159. *See* Kuta & Sulc, *supra* note 59 (listing accidents that occurred at amusement parks due to no uniformity in regulations).

proposed legislation set forth above achieves this goal by returning jurisdiction to the CPSC over fixed-site amusement and water parks.¹⁶⁰

The regulations imposed under the national legislation will combine the highest standards from different states to ensure the highest level of safety in each state.¹⁶¹ In addition, the CPSC should create a subcommittee that specializes in knowledge of amusement park and water park safety.¹⁶² Creating a subcommittee would allow the legislature to amend the required regulations with any new information discovered by the committee.¹⁶³ The subcommittee would be in charge of setting the required regulations for what inspections and standards are necessary for amusement and water parks nationally.¹⁶⁴ By creating a new section in the proposed legislation that establishes the Committee on Amusement Park Safety and defines the Committee's purpose and tasks, the proposed legislation helps to create a way that the safety concerns of amusement park rides can be directly addressed.¹⁶⁵

2. *Opposition to Federal Regulations*

While many people agree that national regulations should be put in place for fixed-site amusement and water parks, some people are opposed to reinstating federal regulations.¹⁶⁶ The people opposed to adding back fixed-site national regulations argue that complying with federal regulations would cost too much money and that even though amusement parks are a billion-dollar industry, it is better to just leave it up to the states to regulate.¹⁶⁷ However, this argument falls short because the regulations in each state are so vastly different.¹⁶⁸ Allowing states to set their own separate regulations, with no governmental oversight, allows for states to set bare-minimum regulations that do not ensure the safety of their citizens.¹⁶⁹

In fact, some states do not even have any regulations.¹⁷⁰ The examples of the people at Disneyland who died because of a faulty seatbelt and the use of the wrong material for a rope show that leaving it up to the states is not an effective method.¹⁷¹ Even if it costs a little bit more money to comply with

160. See *supra* Section III.A (proposing legislation that removes language currently in the CPSA excluding fixed-site amusement parks).

161. See, e.g., CAL. DEP'T OF INDUS. RELS., *supra* note 14; FLA. STAT. § 616.242 (2020); N.Y. STATE DEP'T OF LAB., *supra* note 14; STATE OF N.J. DEP'T OF CMTY. AFFS., *supra* note 14.

162. See, e.g., 15 U.S.C. § 2052 (recognizing different subcommittees in charge of different products).

163. See, e.g., *id.* § 2058 (showing authority of different subcommittees under the Act).

164. See, e.g., *id.* (showing authority of different subcommittees under the Act).

165. See *supra* Section III.A (proposing legislation that adds a committee to regulate amusement and water parks).

166. See WWLP.COM, *supra* note 139.

167. *Id.*

168. SAFEPARKUSA, *supra* note 8.

169. See generally *id.*

170. See *id.*

171. Dowd, *supra* note 61; Kuta & Sulc, *supra* note 59.

federal regulations, the safety and well-being of the state's citizens are more important than how much money it costs to ensure an amusement park or water park is safe.¹⁷² If needed, the park could pass the cost onto the consumers by raising ticket prices slightly to account for the price change to regulate the park.¹⁷³ Most consumers would rather pay a little more for a ticket and know they are safe than pay for a cheap ticket with the possibility that they could get hurt or die.¹⁷⁴ With the high number of visitors to the parks every year, the amount they would need to raise ticket prices would be minimal.¹⁷⁵

Additionally, there are arguments that it would be very difficult to find enough properly trained ride inspectors to take on the large workload, making the national regulations extremely difficult to enforce.¹⁷⁶ It is claimed that it would require at least 300 new inspectors for a federal inspection program, and most states currently do not even have enough trained inspectors.¹⁷⁷ It is argued that the federal program would take inspectors from the state level, which would cause some very effective state inspection programs to shut down.¹⁷⁸ However, this argument also falls short because having the national legislation at the highest level means that all inspectors must follow the same standards.¹⁷⁹ Therefore, the current state inspectors would simply switch over to national inspectors and would not lose their jobs.¹⁸⁰ In addition, because this would require more inspectors in the field, this would create new jobs to boost the economy and provide more business for the companies that

172. See generally Carl O. Muehlhause, *A Cost/Benefit Framework for Consumer Product Safety Standards*, 83 J. RSCH. NAT'L BUREAU STANDARDS 459 (1978).

173. See, e.g., *Pricing Power Is Highly Prized on Wall Street*, THE ECONOMIST (Nov. 6, 2021), <https://www.economist.com/business/2021/11/06/pricing-power-is-highly-prized-on-wall-street>.

174. See, e.g., Paolo Scokai et al., *Consumer Willingness to Pay for Food Safety: The Case of Mycotoxins in Milk*, 3 BIO-BASED & APPLIED ECON. 63, 63 (2014) (discussing consumers' willingness to pay more for milk from cows fed through good practices); *Consumers Willing to Pay Extra for Safety*, HINDUSTAN TIMES (Mar. 7, 2013), <https://www.hindustantimes.com/business/consumers-willing-to-pay-extra-for-safety/story-MDOrlznhrSzCzI375mbl2O.html> (explaining that consumers are willing to pay higher "prices for products that achieve exemplary safety standards").

175. See Faith Karimi, *Before You Go to an Amusement Park, Read This*, CNN HEALTH (June 15, 2018, 5:45 AM), <https://www.cnn.com/2018/03/29/health/amusement-park-incidents/index.html>; *Water Park Demographics and Challenges*, KOOLFOG, <https://koolfog.com/water-park-misting-systems/water-park-demographics-and-challenges/> (last visited Mar. 29, 2022). See generally Dan Flynn, *Meat Industry: Pass Food Safety Costs to Taxpayers*, FOOD SAFETY NEWS (May 10, 2011), <https://www.foodsafetynews.com/2011/05/meat-industry-wants-to-pass-food-safety-costs-to-taxpayers/>.

176. Walter Reiss, *Adding More Regulation to Amusement Parks Would Waste Federal Resources*, U.S. NEWS (Aug. 16, 2013), <https://www.usnews.com/debate-club/should-there-be-more-federal-oversight-of-amusement-parks/adding-more-regulation-to-amusement-parks-would-waste-federal-resources>.

177. *Id.*

178. *Id.*

179. See, e.g., *The Building of a New Inspection Model – National Standards for the Physical Inspection of Real Estate (NSPIRE)*, U.S. DEP'T OF HOUS. & URB. DEV., https://www.hud.gov/program_offices/public_indian_housing/reac/inspire (last visited Mar. 29, 2022).

180. *Id.*

currently do inspections.¹⁸¹ The state inspection programs can simply learn what the federal inspection requirements are and meet those requirements.¹⁸²

Another issue raised is determining which type of amusement and water parks require the most intense regulation.¹⁸³ The amusement park industry is comprised of two different facets: fixed-site parks and mobile carnivals.¹⁸⁴ The argument is that the primary focus of inspection programs should be on the mobile and traveling shows and that attempting to create a federal regulation for fixed-site parks would be a waste of federal resources.¹⁸⁵ However, more people visit fixed-site amusement and water parks each year than nonfixed sites such as carnivals, fairs, and festivals.¹⁸⁶ Additionally, when people go to a fixed-site park, they are there to ride the rides, but when they go to traveling carnivals or fairs, not everyone that goes is there to ride the rides, as there are many more attractions at traveling carnivals and fairs.¹⁸⁷ Also, even if mobile carnivals need higher regulations than fixed-site parks, that does not mean that fixed-site parks do not need uniform national regulations as well.¹⁸⁸

Finally, there are arguments that the number of people who get injured is small compared to the number of people who visit amusement and water parks each year.¹⁸⁹ However, the number of injuries has been increasing each year, and putting federal regulations in place will keep this number from continually rising to the point that a large percentage of people get hurt.¹⁹⁰ Establishing uniform national regulations will help avoid injuries, such as the one that happened to the young boy in Louisiana, simply because no height requirement was posted.¹⁹¹ The goal is to ultimately have no injuries, and while that is probably impossible, the best way to get close to that goal is through federal regulations.¹⁹²

181. See Clyde Wayne Crews Jr., *What Is the Effect of Federal Regulation on Jobs?*, FORBES (Aug. 19, 2018, 5:17 PM), <https://www.forbes.com/sites/waynecrews/2018/08/19/what-is-the-effect-of-federal-regulation-on-jobs/?sh=3910070319dd>.

182. See, e.g., U.S. DEP'T OF HOUS. & URB. DEV., *supra* note 179.

183. Reiss, *supra* note 176.

184. *Id.*

185. *Id.*

186. *Carnival Ride Safety*, OUTDOOR AMUSEMENT BUS. ASS'N, <https://oaba.org/pageserver/carnival-safety> (last visited Mar. 29, 2022); Karimi, *supra* note 175; KOOLFOG, *supra* note 175.

187. See, e.g., Mollie, *The Biggest State Fairs in the United States*, READERS.COM, <https://www.readers.com/blog/biggest-state-fairs/> (last visited Mar. 29, 2022) (listing different attractions at the biggest fairs in the United States).

188. See Kuta & Sulc, *supra* note 59 (listing examples of accidents at fixed-site amusement parks due to lack of regulations).

189. See *Amusement Ride Safety*, IAAPA, <https://www.iaapa.org/safety-security/amusement-ride-safety> (last visited Mar. 29, 2022).

190. NAT'L SAFETY COUNCIL RSCH. GRP., *supra* note 48.

191. WAFB9, *supra* note 71.

192. See generally Pamela Sakowicz Menaker, *Amusement Park Liability—What You Need to Know*, NAT'L L. REV. (July 16, 2018), <https://www.natlawreview.com/article/amusement-park-liability-what-you-need-to-know>.

IV. RECOMMENDED REGULATIONS FOR THE CONSUMER PRODUCT SAFETY
COMMISSION TO ESTABLISH

A. Current Regulations Under the Consumer Product Safety Act

Currently, the CPSC has no jurisdiction over fixed-site amusement and water parks under the CPSA, but it does have jurisdiction over mobile amusement and water parks.¹⁹³ If Congress passes the legislation adding authority back to the CPSC to regulate fixed-site parks, the regulations would be similar to the current regulations followed at mobile sites.¹⁹⁴ Some of the current requirements under the CPSA for mobile sites include the requirement for the ride manufacturer or operator to notify the CPSC if they become aware of any information that supports the conclusion that a ride (1) fails to comply with a safety standard or regulation under § 9 of the CPSA, (2) contains a defect that creates a hazard under § 15(a)(2) of the CPSA, or (3) “creates an unreasonable risk of serious injury or death.”¹⁹⁵ The Committee, which was created under the new legislation, should establish specific regulations that states must follow for fixed-site parks and mobile parks since the setup of the parks differ.¹⁹⁶ This Comment only addresses the regulations the Committee should follow for fixed-site amusement and water parks.

B. Additional Regulations to Be Added

The Committee will be established under the new legislation that adds back the authority of the CPSC to regulate fixed-site amusement and water parks.¹⁹⁷ The Committee will be in charge of establishing what regulations should be put in place nationally for fixed-site amusement and water parks.¹⁹⁸ The regulations should be at the highest standard of all of the state regulations that are currently in place for fixed-sites.¹⁹⁹ These regulations will create uniformity across all states to fix the issue of the vast differences among the current state regulations.²⁰⁰ While a lot of additional regulations will be needed, the following sets forth the main regulations that the Committee should enforce.

193. H.R. 3745, 97th Cong. (1981).

194. *See* SAFEPARKUSA, *supra* note 8.

195. *Id.*

196. *See, e.g.*, 15 U.S.C. § 2058 (showing authority of different subcommittees under the Act).

197. *See, e.g., id.* § 2052 (recognizing different subcommittees in charge of different products).

198. *See, e.g., id.* § 2058 (showing authority of different subcommittees under the Act).

199. *See, e.g.*, CAL. DEP’T OF INDUS. RELS., *supra* note 14; FLA. STAT. § 616.242 (2020); N.Y. STATE: DEP’T OF LAB., *supra* note 14; SAFEPARKUSA, *supra* note 8.

200. *See* SAFEPARKUSA, *supra* note 8.

The inspections should be performed by a qualified safety inspector, similar to how the California program is set up.²⁰¹ The Committee will certify the qualified safety inspectors to ensure that all inspectors meet the same qualifications.²⁰² In addition, the Committee will be in charge of approving schools and providing trainers to create qualified safety inspectors.²⁰³ Requiring the approval of the schools and the trainers will provide uniformity among the inspectors.²⁰⁴

The Committee should set their regulations to require semiannual inspections for amusement and water parks that are open year-round, but for parks that are only opened seasonally, annual inspections are satisfactory.²⁰⁵ A lot can happen to a ride over the course of a year, so performing inspections only once a year for parks that are open year-round provides a large possibility for something to malfunction and not be discovered in time.²⁰⁶ Semiannual inspections would provide the opportunity for defects to be discovered sooner rather than after an accident happens.²⁰⁷

Additionally, the Committee should set the inspection requirements to follow the requirements under New Jersey law.²⁰⁸ New Jersey has a multipart annual inspection requirement and different types of inspection requirements for other inspections that are not just the typical annual inspection.²⁰⁹ In addition to the annual or semiannual inspections set forth above, there should also be reassembly inspections, acceptance inspections, and operational inspections for a ride to be permitted to operate.²¹⁰ Having more than one kind of inspection once or twice a year for rides will help ensure that the rides are safe after the different types of events that may happen to them.²¹¹

V. IN LIEU OF FEDERAL LEGISLATION, TEXAS SHOULD ENACT ADDITIONAL SAFETY REGULATIONS

If Congress does not enact the national legislation for fixed-site amusement and water parks, the Texas Legislature should add additional regulations to their current state regulations.²¹² Texas has the fifth highest

201. See CAL. DEP'T OF INDUS. RELS., *supra* note 14.

202. See *id.*

203. See *id.*

204. See *id.*

205. See, e.g., *Commercial Vehicle Safety Requirements*, ONT., <https://www.ontario.ca/page/commercial-vehicle-safety-requirements> (last visited Mar. 29, 2022) (identifying the need for semiannual inspections instead of annual inspections for commercial vehicles that carry more people).

206. See, e.g., Kuta & Sulc, *supra* note 59.

207. See, e.g., ONT., *supra* note 205 (reasoning that more inspections “reduce collisions caused by mechanical defects and improve highway safety”).

208. See N.J. ADMIN. CODE § 5:14A-2.11 (2018).

209. See *id.*

210. See *id.*

211. See *id.*

212. See TEX. OCC. CODE ANN. § 2151.

number of amusement and water parks in the country and, therefore, needs a higher standard of regulations for the state's amusement and water parks.²¹³

A. Proposed Amendment to Texas Safety Regulations

The current legislation in place in Texas for amusement and water parks is the Amusement Ride Safety Inspection and Insurance Act.²¹⁴ There are multiple issues that need to be addressed in amending the current legislation in Texas, including amending current definitions in the legislation, adding definitions, changing control of who oversees inspections, amending the current annual inspection requirements, and adding additional inspection requirements.²¹⁵

1. Definition Amendments and Additions

First, the definition of “amusement ride” under the legislation should be amended to include a reference to water slides.²¹⁶ Currently, the definition refers to an amusement ride as any mechanical device, and while some water park rides are mechanical, many of the water slides at those parks are not.²¹⁷ The definition should also be amended to include a reference to any gravity-propelled rides because some rides at amusement and water parks are gravity-propelled and not mechanical and would therefore be left out of coverage under this legislation with this omission.²¹⁸

SEC. 2. DEFINITIONS.²¹⁹

- The definition of “amusement ride” under § 2151.002(1) (Sections 2151.0001(1)(A)–(C) excluded) of the Amusement Ride Safety Inspection and Insurance Act is amended as follows:
 - (1) “Amusement ride” means any mechanical device or devices, including, but not limited to, a water slide exceeding fifteen feet in height, that carries passengers along, around, or over a fixed or restricted course or within a defined area for the purpose of giving the passengers amusement, pleasure, thrills or excitement; and any passenger or

213. See *Amusement Parks by State*, *supra* note 44; Levine, *supra* note 15.

214. TEX. OCC. CODE ANN. § 2151.

215. See discussion *infra* Sections V.A.1, V.A.2, V.A.3 (listing the needed changes to the current legislation).

216. See TEX. OCC. CODE ANN. § 2151.002.

217. *Id.*

218. See *A Ride with Gravity: The Physics of Roller Coasters*, PITSCO EDUC. (July 11, 2017), <https://blog.pitsco.com/blog/a-ride-with-gravity>.

219. Alterations from TEX. OCC. CODE ANN. § 2151 are underlined.

gravity-propelled ride when located in an amusement area, amusement park, or water park, including all water slides in amusement areas or parks. The term does not include:

Next, a few definitions need to be added to the legislation to clarify the terms being added in amended sections of the proposed legislation.²²⁰ The first definition to add is “amusement area or park.”²²¹ This term is added in the amended definition of amusement ride, so the term needs to be defined to clarify what type of park is meant by an amusement park.²²² Similarly, the term “water park” should be added under the definition section of the current legislation to establish what qualifies as a water park in the new definition of an amusement ride.²²³ Finally, the definition of a “state inspector” should be added to the current Texas legislation.²²⁴ In the proposed amendment to the legislation, authority over who is in charge of inspecting the amusement park and water park rides is being changed to a state inspector instead of through the insurance company, so a definition is needed of who qualifies as a state inspector.²²⁵

- Section 2151.002 of the Amusement Ride Safety Inspection and Insurance Act is amended to add the following definitions:
 - (7) “Amusement area or park” means any indoor or outdoor location where at least one amusement ride is available for use by the general public.
 - (8) “Water park” means any large indoor or outdoor area with swimming pools, water slides, and similar attractions with at least one ride that totally or partially immerses a patron in water that is available for use by the general public.
 - (9) “State inspector” means an inspector or inspection company that is certified by the state to perform inspections of amusement parks and water parks and who has attended school or training approved by the state.

2. Requirements for Operation

The next amendment to be made to the current legislation is to revise the Requirements for Operation section to change the number of inspections

220. See *supra* text accompanying notes 216–18 (expanding the definition of amusement ride).

221. See, e.g., N.J. ADMIN. CODE § 5:14A-1.2 (2018).

222. See *supra* text accompanying notes 216–18 (expanding the definition of amusement ride).

223. See *supra* text accompanying notes 216–18 (expanding the definition of amusement ride).

224. See, e.g., N.Y. STATE: DEP’T OF LAB., *supra* note 14.

225. See *infra* text accompanying notes 229–31 (altering who is in charge of inspections).

required by Texas.²²⁶ Currently, only one inspection is required per year on each ride at an amusement park or water park.²²⁷ This amount should be changed to twice a year if the park is open year-round, but it can remain at once a year if the park is only open seasonally.²²⁸ Also, the Requirements for Operation section should be amended to change who is inspecting the rides.²²⁹ The legislation currently provides that the ride will be inspected “by an insurer or a person with whom the insurer has contracted.”²³⁰ The person in charge of the inspection should be changed to a state inspector to provide uniformity across the state.²³¹

SEC 3. OPERATION REQUIREMENTS

- Section 2151.101 of the Amusement Ride Safety Inspection and Insurance Act shall be amended in its entirety as follows:
 - Sec. 2151.101. REQUIREMENTS FOR OPERATION.
 - (a) A person may not operate an amusement ride unless the person:
 - (1) has had the amusement ride inspected at least twice in a year by a state inspector if operating an amusement park or water park that is open year-round;
 - (2) has had the amusement ride inspected at least once a year by a state inspector if operating an amusement park or water park that is open seasonally;
 - (3) obtains a written certificate from the state inspector stating that the amusement ride:
 - (A) has been inspected;
 - (B) meets the standards for insurance coverage; and
 - (C) is covered by the insurance required by Subdivision (4);
 - (4) except as provided by Sections 2151.1011 and 2151.1012, has a combined single limit or split limit insurance policy currently in effect written by an insurance company authorized to do business in this state or by a surplus lines insurer, as defined by Chapter 981, Insurance Code, or has an independently procured policy subject to Chapter 101, Insurance Code, insuring the owner or operator

226. See TEX. OCC. CODE ANN. § 2151.101.

227. *Id.*

228. See, e.g., ONT., *supra* note 205 (identifying the need for semiannual inspections instead of annual inspections for commercial vehicles that carry more people).

229. See TEX. OCC. CODE ANN. § 2151.101.

230. *Id.*

231. See, e.g., N.Y. STATE: DEP’T OF LAB., *supra* note 14.

against liability for injury to persons arising out of the use of the amusement ride in an amount of not less than:

- (A) for Class A amusement rides:
 - (i) \$100,000 bodily injury and \$50,000 property damage per occurrence with a \$300,000 annual aggregate; or
 - (ii) a \$150,000 per occurrence combined single limit with a \$300,000 annual aggregate; and
- (B) for Class B amusement rides:
 - (i) \$1,000,000 bodily injury and \$500,000 property damage per occurrence; or
 - (ii) \$1,500,000 per occurrence combined single limit;
- (5) files with the commissioner, as required by this chapter, the inspection certificate and the insurance policy or a photocopy of the certificate or policy authorized by the commissioner; and
- (6) files with each sponsor, lessor, landowner, or other person responsible for the amusement ride being offered for use by the public a photocopy of the inspection certificate and the insurance policy required by this Subsection.
- (b) The inspection certificate and the insurance policy must be filed with the department before July 1 of each year, except that if an amusement ride is required to be inspected more than once a year, the inspection certificate must be filed not later than the fifteenth day after the date of each inspection.
- (c) A local government may satisfy the insurance requirement prescribed by Subsection (a) by obtaining liability coverage through an interlocal agreement.

3. Additional Inspection Requirements

The final change to be proposed to the current legislation is to amend the Inspections section.²³² The Inspections section currently only provides that the yearly inspection “must test for stress-related and wear-related damage” to the rides.²³³ This section should be amended to add additional

232. See TEX. OCC. CODE ANN. § 2151.102.

233. *Id.*

requirements for the annual or semiannual inspections, including requiring a review of different records during the inspection, a complete mechanical inspection, an operating inspection, and a test and inspection of the full emergency brake or anti-rollback system.²³⁴ In addition, the section should be amended to provide for certain required inspections outside of the annual or semiannual inspections.²³⁵ The first type of inspection to be added is a reassembly inspection, which provides that an amusement ride must be inspected after it has been set up.²³⁶ Second, an acceptance inspection should be added, which requires that a ride be inspected before operating after it has had any major modifications.²³⁷ Finally, an operational inspection, which is performed several times a year to observe amusement rides when the operator has not been informed of the inspector's presence, should be added to the Inspections section.²³⁸

SEC 4. INSPECTIONS

- Section 2151.102 of the Amusement Ride Safety Inspection and Insurance Act shall be amended in its entirety as follows:
 - Sec. 2151.102. INSPECTION REQUIREMENTS.
 - (a) The annual or semiannual inspections required by Section 2151.101(a) shall include, but not be limited to:
 - 1. A test for stress-related and wear-related damage of the critical parts of a ride that the manufacturer of the amusement ride determines:
 - (1) are reasonably subject to failure as the result of stress and wear; and
 - (2) could cause injury to a member of the public as a result of a failure.
 - 2. A review of the maintenance records, including periodic checklists;
 - 3. A review of operator training records;
 - 4. A review of required nondestructive testing records if these records were not submitted with the application;
 - 5. A complete mechanical inspection, which may require the ride to be partially disassembled;
 - 6. An operating inspection, during which all safety systems shall be checked and the ride shall be cycled as it is during normal operation; and
 - 7. A test and inspection of the full emergency brake or anti-rollback system, as applicable.²³⁹

234. See, e.g., N.J. ADMIN. CODE § 5:14A-2.11 (2018).

235. See, e.g., *id.*

236. See, e.g., *id.*

237. See, e.g., *id.*

238. See, e.g., *id.*

239. See *id.*

- (b) If at any time the inspection reveals that an amusement ride does not meet the state inspector's standards, the state inspector shall notify the owner or operator.²⁴⁰
- (c) If repair or replacement of equipment is required, it is the responsibility of the owner or operator to make the repair or install the replacement equipment before the amusement ride is offered for public use.²⁴¹
- (d) Reassembly inspection: The state inspector may perform a reassembly inspection at any new set-up. The reassembly inspection shall include, but not be limited to:
 - 1. A review of the maintenance records, including periodic checklists;
 - 2. A review of operator training records;
 - 3. A complete mechanical inspection or, at the discretion of the inspector, a partial inspection addressing only those portions disassembled; and
 - 4. An operating inspection, during which all safety systems shall be checked and the ride shall be cycled as during normal operation.²⁴²
- (e) Acceptance inspection: For other than inflatable rides, an acceptance inspection shall be performed before a new ride, or a ride having undergone a major modification, may operate. The acceptance inspection shall verify conformance with the approved design and shall include, but not be limited to, the following:
 - 1. A review of the maintenance records, including periodic checklists, if applicable;
 - 2. A review of operator training records, including certification of training in accordance with the manufacturer's procedures or manuals;
 - 3. A review of nondestructive testing records, when required;
 - 4. For fixed rides, an erection and assembly certification. This certification shall be retained in the ride file at the Department;
 - 5. Those parts of the assembly process that are required to be witnessed of which the owner was notified during the permit process;
 - 6. A complete mechanical inspection, which may require the ride to be partially disassembled;
 - 7. A check of redundant safety systems; and

240. *See id.*

241. *See id.*

242. *See id.*

- 8. An operating inspection, during which all safety systems shall be checked and the ride shall be cycled as during normal operation.²⁴³
- (f) Operational inspection: An operational inspection shall be performed several times each year. The operational inspection shall include, but not be limited to:
 - 1. Observation of the ride operating when the operator has not been informed of the inspector's presence;
 - 2. A review of operator training records; and
 - 3. Information provided to the owner both verbally and in writing of the results of the inspection.²⁴⁴

B. Current Texas Safety Regulations

Texas has the fifth highest number of amusement and water parks in the country and, therefore, should have extra regulations in place to ensure the safety of all of its citizens and visitors because the state attracts large amounts of visitors to these parks.²⁴⁵ The following sets forth what provisions are lacking in the current legislation and the arguments made in opposition to creating a higher standard for the state.²⁴⁶

1. Issues with Current Texas Legislation

The Amusement Ride Safety Inspection and Insurance Act that currently regulates Texas amusement park and water park safety sets forth fewer regulations than other states with a similar number of amusement and water parks.²⁴⁷ The Texas regulations currently allow amusement park owners to have their rides inspected by their insurance company.²⁴⁸ Allowing the insurance company to inspect the rides can lead to many problems.²⁴⁹ Each insurance company could have contrasting inspection standards, which leads to each park being inspected differently.²⁵⁰ Allowing any insurance company to inspect the ride does not ensure that the rides are actually safe for consumers to use.²⁵¹ Texas should change its regulations to match New York's regulations, where the state government assigns the inspector for all

243. *See id.*

244. *See id.*

245. *See Amusement Parks by State, supra* note 44; Levine, *supra* note 15.

246. *See* discussion *infra* Sections V.B.1, V.B.2.

247. *See generally* TEX. OCC. CODE ANN. § 2151.

248. *Id.* § 2151.101.

249. *See, e.g.,* Brian White, *Counting Down 5 Texas Theme Park Mishaps*, BRIAN WHITE PERS. INJ. LAWS (Oct. 18, 2015), <https://attorneybrianwhite.com/blog/counting-down-5-texas-theme-park-mishaps/>.

250. *See* TEX. OCC. CODE ANN. § 2151.101.

251. *See id.*

amusement parks.²⁵² The requirements for the inspector should also encompass the standards established by California, which requires that the state approve the schools and training providers who train the qualified safety inspectors.²⁵³ This would ensure that insurance companies cannot pick an inspector who does not correctly inspect the rides or can be bribed to ignore any issues.²⁵⁴

The Texas regulations also currently require that the amusement rides be inspected annually.²⁵⁵ Instead of annual inspections, Texas should amend its regulations to require semiannual inspections for amusement and water parks that are open year round, but for parks that are only opened seasonally, annual inspections are satisfactory.²⁵⁶ Amusement park rides run countless number of times throughout the year and are put through many different types of weather.²⁵⁷ These conditions can lead to problems occurring at any point in the year.²⁵⁸ Therefore, having a ride inspected only once a year is not often enough because issues will not be discovered in time if they happen far in advance from the next inspection.²⁵⁹

Additionally, the only inspection requirements currently set forth under the Act are for the inspector to test for stress-related and wear-related damage to the critical parts of a ride that the manufacturer of the amusement ride believes are reasonably subject to failure as the result of stress and wear and could cause injury to a member of the public as a result of the failure.²⁶⁰ This sets the standards of inspection extremely low compared to other states, such as New Jersey, which has a multipart annual inspection requirement and additional types of inspection requirements for other inspections outside of the typical annual inspection.²⁶¹ Texas should amend its inspection regulations to mirror the regulations set forth by New Jersey.²⁶²

252. N.Y. STATE: DEP'T OF LAB., *supra* note 14.

253. CAL. DEP'T OF INDUS. RELS., *supra* note 14.

254. *See, e.g.*, Benjamin Mueller, *New York City Building Inspectors Charged in Bribe Schemes*, N.Y. TIMES (Feb. 10, 2015), <https://www.nytimes.com/2015/02/11/nyregion/new-york-city-buildings-inspectors-charged-with-bribery.html>.

255. *See* TEX. OCC. CODE ANN. § 2151.102.

256. *See, e.g.*, ONT., *supra* note 205 (identifying the need for semi-annual inspections instead of annual inspections for commercial vehicles that carry more people).

257. *See Most Visited Amusement and Theme Parks in North America 2020*, STATISTA (Nov. 2, 2021), <https://www.statista.com/statistics/194269/attendance-at-theme-and-amusement-parks-in-north-america/> (listing the number of visitors to popular theme parks in 2020).

258. *See, e.g.*, Kuta & Sulc, *supra* note 59.

259. *See, e.g., id.*

260. TEX. OCC. CODE ANN. § 2151.102.

261. STATE OF N.J. DEP'T OF CMTY. AFFS., *supra* note 14.

262. *See id.*

2. Opposition to Additional Texas Regulations

Just as there is opposition against creating national legislation for fixed-site amusement and water parks, there is also opposition to raising the level of regulations required under the current Texas legislation.²⁶³ Amusement park and water park owners in Texas would argue that additional regulations added to the current Texas regulations would cause additional costs in order for them to comply with the laws.²⁶⁴ However, because Texas has the fifth highest number of amusement park and water park locations in the United States, it makes Texas a popular destination for people to come visit and, therefore, there needs to be extra regulations to provide safety for the citizens and tourists when they visit the parks.²⁶⁵ The health and safety of people are worth the extra cost of ensuring that all parks are as safe as can be in Texas.²⁶⁶

In addition, current inspection companies that are being used by insurance companies will likely complain about the requirement of having the inspector selected by the state, claiming that it will cause them to lose business.²⁶⁷ However, these companies could work to become certified by the state to be able to follow the consistent state requirements set forth that will ensure all parks are inspected in the same manner.²⁶⁸ The extra work of becoming certified by the state is well worth the time because it will ensure that all parks are meeting the same standard of safety.²⁶⁹

VI. CONCLUSION

The United States currently has no national legislation regulating fixed-site amusement and water parks.²⁷⁰ Due to the lack of national legislation, regulations are left to the states to set their own standards.²⁷¹ The regulations set forth in each state are vastly different, and some states do not even have any regulations at all.²⁷² This lack of consistency throughout the states demonstrates the need for a national regulation that sets a consistent standard that needs to be met by the states to ensure the safety of citizens visiting these

263. See WWLP.COM, *supra* note 139.

264. See generally Reiss, *supra* note 176.

265. See *Amusement Parks by State*, *supra* note 44; Levine, *supra* note 15.

266. See generally Pete Trabucco, *Summer Safety: Amusement Parks: 10 Tips to Have Fun but Stay Safe!*, EHSTODAY (June 6, 2016), <https://www.ehstoday.com/safety/article/21917641/summer-safety-amusement-parks-10-tips-to-have-fun-but-stay-safe>.

267. See, e.g., *Grain Inspection: Hearings Before the Subcomm. on Foreign Agric. Pol'y & Subcomm. on Agric. Prod., Mktg., & Stabilization of Prices of the Comm. on Agric. and Forestry*, 94th Cong. 141 (1975).

268. See, e.g., *Inspector Qualifications and Training*, TEX. DEP'T PUB. SAFETY, <https://www.dps.texas.gov/section/vehicle-inspection/inspector-qualifications-and-training> (last visited Mar. 29, 2022).

269. *Id.*

270. WRSMH, *supra* note 7.

271. SAFEPARKUSA, *supra* note 8.

272. *Id.*

parcs.²⁷³ Congress should reinstate the authority of the CPSC to be able to regulate fixed-site amusement and water parks.²⁷⁴ In addition to adding back national regulations, Congress should also establish a subcommittee that specializes in knowledge of amusement park and water park safety.²⁷⁵ This subcommittee would be in charge of establishing what regulations must be met by the states.²⁷⁶

Finally, if Congress does not establish national legislation that returns jurisdiction to the CPSC to regulate fixed-site amusement and water parks, the Texas Legislature should add additional regulations to their current state regulations to match the higher standards set up by other states with similar amounts of amusement and water parks.²⁷⁷ Texas currently has the fifth highest amount of amusement and water parks in the country, yet the state's regulations are highly inadequate compared to other states' regulations.²⁷⁸ Adding a higher standard of regulations would help to ensure the safety of citizens who travel from all over the country to come visit the wide variety of parks in Texas.²⁷⁹

273. *Id.*

274. *See, e.g.*, H.R. 2861, 112th Cong. (2011).

275. *See, e.g.*, 15 U.S.C. § 2052 (recognizing different subcommittees in charge of different products).

276. *See, e.g., id.* § 2058 (showing authority of different subcommittees under the Act).

277. *See, e.g.*, CAL. DEP'T OF INDUS. RELS., *supra* note 14; FLA. STAT. § 616.242 (2020); N.Y. STATE: DEP'T OF LAB., *supra* note 14; STATE OF N.J. DEP'T OF CMTY. AFFS., *supra* note 14.

278. Levine, *supra* note 15; *see, e.g.*, CAL. DEP'T OF INDUS. RELS., *supra* note 14; FLA. STAT. § 616.242 (2020); N.Y. STATE: DEP'T OF LAB., *supra* note 14; STATE OF N.J. DEP'T OF CMTY. AFFS., *supra* note 14.

279. *See, e.g.*, N.J. ADMIN. CODE § 5:14A-2.11 (2018).

APPENDIX

*A. Proposed Federal Legislation*A BILL²⁸⁰

To restore the jurisdiction of the Consumer Product Safety Commission over amusement park and water park rides which are at a fixed site, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION. 1. SHORT TITLE.

- This Act may be cited as the “National Amusement Park and Water Park Ride Safety Act of 2022.”

SEC. 2. JURISDICTION OVER FIXED-SITE AMUSEMENT RIDES AND WATER PARK RIDES.

- Section 3(a)(5) of the Consumer Product Safety Act (15 U.S.C. 2052(a)(5)) is amended by striking “and which is not permanently fixed to a site. Such term does not include such a device which is permanently fixed to a site” and inserting a period.

SEC 3. STATE REGULATIONS

- The following section is added as Section 16(a)(3) of the Consumer Product Safety Act (15 U.S.C. 2065):
 - (3) Congress will establish a committee entitled the Committee on Amusement Park Safety that will oversee the specific inspection regulations required for amusement parks and water parks.
 - The Committee on Amusement Park Safety will oversee proposing any future amendments to the national regulations.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

- There are authorized to be appropriated to the Consumer Product Safety Commission \$500,000 for each fiscal year to enable the Commission to carry out the Consumer Product Safety Act as amended by this Act.

280. Modeled after the National Amusement Park Ride Safety Act of 2011 proposed as H.R. 2861, 112th Cong. (2011).

B. Proposed Amendment to Current Texas Legislation

SEC. 1. SHORT TITLE.

- This Act may be cited as the “2022 Amendment to the Amusement Ride Safety Inspection and Insurance Act.”

SEC. 2. DEFINITIONS.

- The definition of “amusement ride” under Section 2151.002(1) (Sections 2151.0001(1)(A)–(C) excluded) of the Amusement Ride Safety Inspection and Insurance Act is amended as follows:
 - (1) “Amusement ride” means any mechanical device or devices, including, but not limited to, a water slide exceeding fifteen feet in height, that carries passengers along, around, or over a fixed or restricted course or within a defined area for the purpose of giving the passengers amusement, pleasure, thrills or excitement; and any passenger or gravity propelled ride when located in an amusement area, amusement park or water park, including all water slides in amusement areas or parks. The term does not include.”²⁸¹
- Section 2151.002 of the Amusement Ride Safety Inspection and Insurance Act is amended to add the following definitions:
 - (7) “Amusement area or park” means any indoor or outdoor location where at least one amusement ride is available for use by the general public.²⁸²
 - (8) “Water park” means any large indoor or outdoor area with swimming pools, water slides, and similar attractions with at least one ride that totally or partially immerses a patron in water that is available for use by the general public.²⁸³
 - (9) “State inspector” means an inspector or inspection company that is certified by the state to perform inspections of amusement parks and water parks and who has attended school or training approved by the state.²⁸⁴

SEC. 3. OPERATION REQUIREMENTS

- Section 2151.101 of the Amusement Ride Safety Inspection and Insurance Act shall be amended in its entirety as follows:
 - Sec. 2151.101. REQUIREMENTS FOR OPERATION.

281. N.J. ADMIN. CODE § 5:14A-1.2 (2018).

282. *Id.*

283. FLA. STAT. § 616.242 (2020); *Water Park*, DICTIONARY.COM, <https://www.dictionary.com/browse/water-park> (last visited Mar. 29, 2022).

284. N.Y. STATE: DEP’T OF LAB., *supra* note 14.

- (a) A person may not operate an amusement ride unless the person:
 - (1) has had the amusement ride inspected at least twice in a year by a state inspector if operating an amusement park or water park that is open year-round;²⁸⁵
 - (2) has had the amusement ride inspected at least once a year by a state inspector if operating an amusement park or water park that is open seasonally;²⁸⁶
 - (3) obtains a written certificate from the state inspector stating that the amusement ride:²⁸⁷
 - (A) has been inspected;
 - (B) meets the standards for insurance coverage; and
 - (C) is covered by the insurance required by Subdivision (4);
 - (4) except as provided by Sections 2151.1011 and 2151.1012, has a combined single limit or split limit insurance policy currently in effect written by an insurance company authorized to do business in this state or by a surplus lines insurer, as defined by Chapter 981, Insurance Code, or has an independently procured policy subject to Chapter 101, Insurance Code, insuring the owner or operator against liability for injury to persons arising out of the use of the amusement ride in an amount of not less than:
 - (A) for Class A amusement rides:
 - (i) \$100,000 bodily injury and \$50,000 property damage per occurrence with a \$300,000 annual aggregate; or
 - (ii) a \$150,000 per occurrence combined single limit with a \$300,000 annual aggregate; and
 - (B) for Class B amusement rides:
 - (i) \$1,000,000 bodily injury and \$500,000 property damage per occurrence; or

285. *Id.*

286. *Id.*

287. *Id.*

- (ii) \$1,500,000 per occurrence combined single limit;
 - (5) files with the commissioner, as required by this chapter, the inspection certificate and the insurance policy or a photocopy of the certificate or policy authorized by the commissioner; and
 - (6) files with each sponsor, lessor, landowner, or other person responsible for the amusement ride being offered for use by the public a photocopy of the inspection certificate and the insurance policy required by this Subsection.
- (b) The inspection certificate and the insurance policy must be filed with the department before July 1 of each year, except that if an amusement ride is required to be inspected more than once a year, the inspection certificate must be filed not later than the 15th day after the date of each inspection.
- (c) A local government may satisfy the insurance requirement prescribed by Subsection (a) by obtaining liability coverage through an interlocal agreement.

SEC 4. INSPECTIONS

- Section 2151.102 of the Amusement Ride Safety Inspection and Insurance Act shall be amended in its entirety as follows:
 - Sec. 2151.102. INSPECTION REQUIREMENTS.
 - (a) The annual or semiannual inspections required by Section 2151.101(a) shall include, but not be limited to:
 - 1. A test for stress-related and wear-related damage of the critical parts of a ride that the manufacturer of the amusement ride determines:
 - (1) are reasonably subject to failure as the result of stress and wear; and
 - (2) could cause injury to a member of the public as a result of a failure.
 - 2. A review of the maintenance records, including periodic checklists;²⁸⁸
 - 3. A review of operator training records;²⁸⁹
 - 4. A review of required non-destructive testing records if these records were not submitted with the application;²⁹⁰

288. See N.J. ADMIN. CODE § 5:14A-2.11 (2018).

289. See *id.*

290. See *id.*

- 5. A complete mechanical inspection, which may require the ride to be partially disassembled;²⁹¹
- 6. An operating inspection, during which all safety systems shall be checked and the ride shall be cycled as it is during normal operation;²⁹² and
- 7. A test and inspection of the full emergency brake or anti-rollback system, as applicable.²⁹³
- (b) If at any time the inspection reveals that an amusement ride does not meet the state inspector's standards, the state inspector shall notify the owner or operator.²⁹⁴
- (c) If repair or replacement of equipment is required, it is the responsibility of the owner or operator to make the repair or install the replacement equipment before the amusement ride is offered for public use.²⁹⁵
- (d) Reassembly inspection: The state inspector may perform a reassembly inspection at any new set up. The reassembly inspection shall include, but not be limited to:
 - 1. A review of the maintenance records, including periodic checklists;
 - 2. A review of operator training records;
 - 3. A complete mechanical inspection or, at the discretion of the inspector, a partial inspection addressing only those portions disassembled; and
 - 4. An operating inspection, during which all safety systems shall be checked, and the ride shall be cycled as during normal operation.²⁹⁶
- (e) Acceptance inspection: For other than inflatable rides, an acceptance inspection shall be performed before a new ride, or a ride having undergone a major modification, may operate. The acceptance inspection shall verify conformance with the approved design and shall include, but not be limited to, the following:
 - 1. A review of the maintenance records, including periodic checklists, if applicable;
 - 2. A review of operator training records, including certification of training in accordance with the manufacturer's procedures or manuals;
 - 3. A review of nondestructive testing records, when required;

291. *See id.*

292. *See id.*

293. *See id.*

294. *See id.*

295. *See id.*

296. *See id.*

- 4. For fixed rides, an erection and assembly certification. This certification shall be retained in the ride file at the Department;
 - 5. Those parts of the assembly process that are required to be witnessed of which the owner was notified during the permit process;
 - 6. A complete mechanical inspection, which may require the ride to be partially disassembled;
 - 7. A check of redundant safety systems; and
 - 8. An operating inspection, during which all safety systems shall be checked and the ride shall be cycled as during normal operation.²⁹⁷
- (f) Operational inspection: An operational inspection shall be performed several times each year. The operational inspection shall include, but not be limited to:
 - 1. Observation of the ride operating when the operator has not been informed of the inspector's presence;
 - 2. A review of operator training records; and
 - 3. Information provided to the owner both verbally and in writing of the results of the inspection.²⁹⁸

297. *See id.*

298. *See id.*