

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

H.B. 196  
Feb 23, 2017  
HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH40091-LRf-14 (01/03)

Short Title: Zip Lines/Challenge Courses/Sanders' Law. (Public)

Sponsors: Representatives Davis and Howard (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO REGULATE ZIP LINES AND CHALLENGE COURSES AND TO PROVIDE  
3 THAT THE ACT SHALL BE ENTITLED "SANDERS' LAW."

4 The General Assembly of North Carolina enacts:

5 SECTION 1. This act shall be known as "Sanders' Law."

6 SECTION 2. Chapter 95 of the General Statutes is amended by adding a new Article  
7 to read:

8 "Article 14C.

9 "Zip Line and Challenge Course Safety.

10 "**§ 95-112.1. Short title and legislative purpose.**

11 (a) This Article shall be known as the "Zip Line and Challenge Course Safety Act of North  
12 Carolina."

13 (b) The General Assembly finds that zip lining and participating in challenge courses is  
14 practiced by a large number of North Carolinians and visitors to our State and that the industry is  
15 growing rapidly.

16 (c) The General Assembly finds that there are inherent risks in zip lining and participating  
17 in challenge courses which should be understood by each participant and which are essentially  
18 impossible to eliminate by the zip line or challenge course operator.

19 (d) The General Assembly finds that although most zip lines and challenge courses are  
20 operated in a safe manner, those which are not impose a substantial probability of serious and  
21 preventable injury to the public. Protection of the public from exposure to such unsafe conditions  
22 and the prevention of injuries is in the best interest and welfare of the people of the State.

23 (e) It is the intent of this Article that zip lines, aerial adventure parks, canopy tours,  
24 challenge courses, or other similar devices shall be designed, constructed, assembled or  
25 disassembled, maintained, and operated so as to prevent injuries.

26 "**§ 95-112.2. Scope.**

27 (a) This Article governs the design, construction, installation, plans review, testing,  
28 inspection, certification, operation, use, maintenance, alteration, relocation, and investigation of  
29 accidents involving zip lines, aerial adventure parks, canopy tours, challenge courses, or other  
30 similar devices.

31 (b) This Article does not apply to any zip line, aerial adventure park, canopy tour,  
32 challenge course, or other similar devices (i) installed at a private residence that is not open to the  
33 public and for which no fee is charged or (ii) operated by a government entity solely for law  
34 enforcement or military training purposes.

35 "**§ 95-112.3. Definitions.**

36 The following definitions apply in this Article:



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- 1           (1)    ACCT. – Association for Challenge Course Technology.
- 2           (2)    Aerial adventure park. – A self-guided challenge course that is open to the  
3           public.
- 4           (3)    Annual gross volume. – The gross receipts a person or device receives from all  
5           types of sales made and business done during a 12-month period.
- 6           (4)    Bureau. – Elevator and Amusement Device Bureau of the North Carolina  
7           Department of Labor.
- 8           (5)    Canopy tour. – A belayed aerial recreational or educational, guided or  
9           self-guided, traverse or discovery tour of the forest canopy, flora and fauna, and  
10           related ecologically significant areas most commonly by means of a series of  
11           zip lines or aerial walkways with platforms.
- 12           (6)    Challenge course. – Any apparatus or facility specifically designed or  
13           constructed, or both, for the use of individuals or teams, which through high or  
14           low nonspotted, spotted, or belayed activities, under trained facilitated  
15           supervision, guided or self-guided, are utilized as elements of experiential  
16           learning programs or curriculums or as adventure/challenge recreational  
17           components or courses. Such facility or facilities usually consists of one or  
18           more elements that challenge participants and include zip line tours, canopy  
19           tours, or aerial adventure/trekking parks.
- 20           (7)    Challenge course standards. – Any standard adopted pursuant to G.S. 95-112.5.
- 21           (8)    Chief. – The Chief of the Elevator and Amusement Device Bureau of the North  
22           Carolina Department of Labor.
- 23           (9)    Commissioner. – Commissioner of Labor of North Carolina.
- 24           (10)   ERCA. – European Ropes Course Association.
- 25           (11)   Imminent danger. – Practice or condition which could reasonably be expected  
26           to cause death or serious injury to participants, operators, or the general public.
- 27           (12)   Operator. – Any person, partnership, corporation, or other commercial entity,  
28           and their agents, officers, employees, or representatives, who has operational  
29           responsibility for any device subject to the provisions of this Article.
- 30           (13)   Owner. – Any person or authorized agent of such person who owns a device  
31           subject to the provisions of this Article or in the event such device is leased, the  
32           lessee. The term "owner" also shall include the State of North Carolina or any  
33           political subdivision thereof or any unit of local government.
- 34           (14)   Participant. – Any person who engages in activities on a device subject to the  
35           provisions of this Article individually or in a group activity supervised by an  
36           operator of such a device.
- 37           (15)   Person. – Any individual, association, partnership, firm, corporation, private  
38           organization, or the State of North Carolina or any political subdivision thereof  
39           or any unit of local government.
- 40           (16)   PRCA. – Professional Ropes Course Association.
- 41           (17)   Qualified inspector. – A professional inspector who is certified by the Bureau  
42           pursuant to G.S. 95-112.8, or a person employed by the Bureau who meets the  
43           training and experience requirements of a qualified inspector pursuant to  
44           G.S. 95-112.8.
- 45           (18)   Serious injury. – An injury that is directly related to any mechanical, electrical,  
46           operational, or structural malfunction of a device subject to the provisions of  
47           this Article that results in death, loss of consciousness, or requires medical  
48           treatment other than first aid by a physician or other medical professional for  
49           which a record is created.
- 50           (19)   Third-party inspector. – A qualified inspector, as defined in this section, not  
51           directly employed by the operator or parent company of the device subject to

1 the provisions of this Article, original equipment manufacturer, or vendor and  
2 not offering other services to the operator or parent company of the device  
3 subject to the provisions of this Article.

4 (20) Zip line. – A lifeline suspended between support structures that enables a  
5 person attached to a pulley to traverse from a starting point to a terminus  
6 propelled by the force of gravity or a passive method of controlled acceleration.

7 (21) Zip line tour. – A belayed recreational or educational, guided or self-guided,  
8 course or tour traversing areas of scenic, ecological, and/or cultural  
9 significance. Zip line tours typically involve action or activity systems such as  
10 zip lines, platforms, landing areas, and connecting trails.

11 **§ 95-112.4. Powers and duties of Commissioner.**

12 The Commissioner of Labor is hereby empowered to do all of the following:

13 (1) To delegate to the Chief of the Elevator and Amusement Device Bureau such  
14 powers, duties, and responsibilities as the Commissioner determines will best  
15 serve the public interest in the safe operation of zip lines, aerial adventure  
16 parks, canopy tours, challenge courses, or other similar devices.

17 (2) To supervise the Chief of the Elevator and Amusement Device Bureau.

18 (3) To adopt, modify, or revoke such rules as are necessary for the purpose of  
19 carrying out the provisions of this Article including those governing the design,  
20 construction, installation, plans review, testing, inspection, certification,  
21 operation, use, maintenance, alteration, and relocation of devices subject to the  
22 provisions of this Article. The rules adopted pursuant to this rule-making  
23 authority shall conform to good engineering and safety standards, formulas, and  
24 practices.

25 (4) To enforce rules adopted under authority of this Article.

26 (5) To require inspection and testing for all new, modified, and relocated devices  
27 subject to the provisions of this Article. Devices shall be inspected at least once  
28 annually.

29 (6) To require maintenance and periodic inspections and tests of all devices subject  
30 to the provisions of this Article.

31 (7) To issue certificates of operation which certify for use such devices as are  
32 found to be in compliance with this Article and the rules adopted thereunder.

33 (8) To have reasonable access, with or without notice, to the devices subject to the  
34 provisions of this Article during reasonable hours for purposes of inspection or  
35 testing.

36 (9) To obtain an Administrative Search and Inspection Warrant in accordance with  
37 the provisions of Article 4A of Chapter 15 of the General Statutes.

38 (10) To investigate accidents involving devices subject to the provisions of this  
39 Article to determine the cause of the accident. The Commissioner shall have  
40 full subpoena powers in conducting the investigation.

41 (11) To institute proceedings in the civil courts of this State when a provision of this  
42 Article or the rules adopted thereunder has been violated.

43 (12) To adopt, modify, or revoke rules governing the qualifications of inspectors.

44 (13) To grant exceptions from the requirements of the rules adopted under authority  
45 of this Article and to permit the use of other devices when these exceptions and  
46 uses will not expose the public to an unsafe condition likely to result in serious  
47 personal injury or property damage.

48 (14) To require that before any device subject to the provisions of this Article is  
49 erected in this State, or before any additions or alterations which substantially  
50 change the device are made, or before the physical spacing between the devices  
51 is changed, the owner or the owner's authorized agent shall have the plans,

1 diagrams, specifications, or stress analyses of the device approved by a  
2 professional engineer licensed in North Carolina.

3 (15) To prohibit the use of any device subject to the provisions of this Article which  
4 is found upon inspection to expose the public to an unsafe condition likely to  
5 cause personal injury or property damage. Such a device shall be made  
6 operational only upon the Commissioner's determination that it has been made  
7 safe.

8 (16) To order the payment of all civil penalties provided by this Article. The clear  
9 proceeds of funds collected pursuant to a civil penalty order shall be remitted to  
10 the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

11 (17) To coordinate enforcement and inspection activity relative to equipment,  
12 devices, and operations covered by this Article in order to minimize duplication  
13 of liability or regulatory responsibility on the part of the employer or owner.

14 (18) To charge reasonable fees for:

15 a. The issuance of certificates of operation for devices subject to this  
16 Article.

17 b. The inspection by the Bureau of devices subject to this Article.

18 c. A qualified inspector designation.

19 **"§ 95-112.5. Adoption of standards.**

20 The following standards and subsequent amendments and editions are adopted and  
21 incorporated by reference. The design, manufacture, installation, operation, and maintenance of all  
22 devices subject to this Article must conform to one of the following standards, except where  
23 otherwise specifically provided in this Article or in rules adopted pursuant to this Article:

24 (1) The Association for Challenge Course Technology (ACCT) ANSI/ACCT  
25 03-2016 Challenge Course and Canopy/Zip Line Tour Standard.

26 (2) The Professional Ropes Course Association (PRCA) ANSI/PRCA 1.0-.3-2014  
27 Ropes Challenge Course Installation, Operation & Training Standard.

28 (3) The European Ropes Course Association (ERCA) European Ropes Course  
29 Standard (EN 15567-2:2014).

30 (4) The American Society for Testing and Materials (ASTM) F2959-14 Standard  
31 Practice for Special Requirements for Aerial Adventure Courses.

32 **"§ 95-112.6. Certificate of operation requirements.**

33 (a) An owner of a device subject to the provisions of this Article shall annually submit an  
34 application for a certificate of operation to the Commissioner and shall request a certificate of  
35 operation for each device at least 30 days before the expiration of the certificate.

36 (b) An owner of a device subject to the provisions of this Article shall submit the  
37 application on forms provided by the Commissioner.

38 (c) An owner of a device subject to the provisions of this Article shall include in the initial  
39 application certification from a professional engineer licensed in North Carolina indicating that the  
40 design of the device has been approved by the professional engineer.

41 (d) An owner of a device subject to the provisions of this Article shall include in the initial  
42 application certification from a professional engineer licensed in North Carolina indicating that the  
43 installation of the device has been approved by the professional engineer.

44 (e) The owner of a device subject to the provisions of this Article shall include in any  
45 subsequent application certification from a professional engineer licensed in North Carolina  
46 indicating that any additions or alterations which substantially change the device have been  
47 approved by the professional engineer.

48 (f) An owner of a device subject to the provisions of this Article shall include the  
49 following information on the initial as well as the annual application:

50 (1) The name, address, telephone number, e-mail address (if applicable), and Web  
51 site address (if applicable) of the device owner.

- 1           (2)   Registration of the device, including its location, dates of operation, date of  
2           installation, and the name and address of the installer of the equipment.
- 3           (3)   Documentation of a commercial general liability insurance policy covering  
4           claims for personal injury, death, and property damages arising from the  
5           operation of a device subject to the provisions of this Article in amounts not  
6           less than those specified in G.S. 95-112.12.
- 7           (4)   If the device incorporates live trees, the tree or trees shall be inspected and  
8           approved by an International Society of Arboriculture-certified arborist or other  
9           professional with equivalent expertise to ensure good health and stability of the  
10          trees. All trees shall receive this assessment no less than annually.
- 11          (5)   An inspection report completed no more than 60 days prior to submission of the  
12          application prepared by a third-party, qualified inspector pursuant to  
13          G.S. 95-112.7(a). The inspection report must include proof of abatement of all  
14          deficiencies found in the inspection.
- 15          (6)   Signed certification of compliance with the record-keeping requirements of  
16          G.S. 95-112.9.
- 17          (7)   Signed certification of compliance with applicable federal, State, and local  
18          safety, fire, health, or building codes or standards.
- 19          (g)   An owner of the device shall include the certificate of operation fee with the certificate  
20          of application.

21          (h)   A certificate of operation for a device expires one year after date of issuance.

22          (i)   If any requirement of this section is already met as a condition of liability insurance  
23          coverage obtained pursuant to G.S. 95-112.15, the owner may submit documentation of  
24          compliance with that requirement to the Commissioner.

25          **"§ 95-112.7. Annual inspection; issuance of certificate of operation.**

26          (a)   A third-party, qualified inspector shall inspect a device subject to the provisions of this  
27          Article and determine that it is in compliance with the provisions of this Article and any rules  
28          adopted pursuant to this Article before a certificate of operation may be issued.

29          (b)   The operator of the device shall post a copy of the certificate of operation in close  
30          proximity to the entry to the device where it is readily visible to participants.

31          **"§ 95-112.8. Qualified inspector designation; qualifications and certification of qualified**  
32          **inspectors.**

33          (a)   A person applying for designation as a qualified inspector shall make application  
34          biennially on a form provided by the Commissioner.

35          (b)   An applicant shall furnish documentation of the following with the application:

36               (1)   Current Professional Inspector Certification from the ACCT or a substantially  
37               equivalent certification as defined in the challenge course standards; or  
38               experience and training that the Commissioner has determined in advance are  
39               substantially equivalent to the requirements set forth in the challenge course  
40               standards.

41               (2)   The applicant must report to the Commissioner any lapse in professional  
42               inspector certification. Lapse in professional inspector certification will result  
43               in immediate suspension of the individual's qualified inspector designation until  
44               such time that the individual provides renewal documentation.

45          (c)   An applicant for designation as a qualified inspector shall include the application fee  
46          with the application.

47          **"§ 95-112.9. Pre-opening inspection and test; training; emergency evacuation plan; records;**  
48          **revocation of certificate of operation.**

49          (a)   An owner of a device subject to the provisions of this Article, or the owner's authorized  
50          agent, is hereby required to make a preopening inspection and test of such device, prior to

1 admitting the participants, each day such device is intended to be used and in accordance with  
2 challenge course standards.

3 (b) An owner of a device subject to the provisions of this Article, or the owner's authorized  
4 agent, is hereby required to train employees on the operation of the device in accordance with Part  
5 1.3 of the ANSI/PRCA 2014 Ropes Challenge Course Installation, Operation & Training Standard  
6 or a substantially similar standard.

7 (c) An owner of a device subject to the provisions of this Article, or the owner's authorized  
8 agent, is hereby required to have an emergency evacuation plan for the device in accordance with  
9 challenge course standards.

10 (d) An owner of a device subject to the provisions of this Article, or the owner's authorized  
11 agent, is required to maintain for at least the previous 12 months a signed record of the required  
12 pre-opening inspection and test, training provided to employees, emergency evacuation plan, and  
13 such other pertinent information as the Commissioner may require by rule or regulation.

14 (e) The Commissioner may refuse to issue or renew or may revoke, suspend, or amend the  
15 certificate of operation for any device regulated by this Article upon failure by the owner or the  
16 owner's authorized agent to make the required pre-opening inspection and test, to train employees,  
17 to maintain an emergency evacuation plan, or to maintain the required records.

18 **"§ 95-112.10. Noncomplying devices; appeal.**

19 (a) Whenever the Commissioner determines that a device is subject to the provisions of  
20 this Article and the operation of such device is exposing the public to an unsafe condition likely to  
21 result in serious personal injury or property damage, the Commissioner immediately may order in  
22 writing that the use of the device be stopped or limited until such time as the Commissioner  
23 determines that the device has been made safe for use by the public.

24 (b) Whenever the Commissioner determines that the provisions of this Article or the rules  
25 and regulations adopted thereunder have not been complied with, the Commissioner may refuse to  
26 issue or renew or may revoke, suspend, or amend a certificate of operation.

27 (c) Any action taken under this section by the Commissioner shall be final unless within  
28 15 days after receipt of notice thereof by certified mail with return receipt, by signature  
29 confirmation as provided by the U.S. Postal Service, by a designated delivery service authorized  
30 pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand delivery the person against  
31 whom such action was taken files a petition for a contested case under Chapter 150B of the  
32 General Statutes.

33 **"§ 95-112.11. Operation without certificate; operation not in accordance with Article or**  
34 **rules and regulations; operation after refusal to issue or after revocation of**  
35 **certificate.**

36 (a) No person shall operate or permit to be operated or use any device subject to the  
37 provisions of this Article without a valid certificate of operation.

38 (b) No person shall operate or permit to be operated or use any device subject to the  
39 provisions of this Article otherwise than in accordance with this Article and the rules and  
40 regulations adopted thereunder.

41 (c) No person shall operate or permit to be operated or use any device subject to the  
42 provisions of this Article after the Commissioner has refused to issue or has revoked the certificate  
43 of operation for such device.

44 **"§ 95-112.12. Operation of unsafe device.**

45 No person shall operate, permit to be operated, or use any device subject to the provisions of  
46 this Article if such person knows or reasonably should know that the operation or use will expose  
47 the public to an unsafe condition that is likely to result in personal injury or property damage.

48 **"§ 95-112.13. Accidents; shut down; reporting.**

49 (a) If a participant or member of the general public is involved in an accident related to the  
50 operation of a device subject to the provisions of this Article that results in a serious injury or a

1 fatality, the owner or operator shall immediately shut down the operation of the device and secure  
2 the safety of other participants and the general public.

3 (b) An owner or operator shall ensure that the scene of a serious injury or fatality is left  
4 intact from the time of the accident and shall ensure that the device involved is not removed from  
5 the scene of the accident without written authorization from the Commissioner.

6 (c) The owner, operator, and any employees who witnessed the accident or who operated  
7 the device when the accident occurred shall be available to be interviewed by the Commissioner or  
8 the Commissioner's designated representative.

9 (d) The owner of any device regulated under the provisions of this Article, or the owner's  
10 authorized agent, shall within 24 hours notify the Commissioner of each and every occurrence  
11 involving such device when any of the following occur:

12 (1) The occurrence results in death or injury requiring medical treatment, other than  
13 first aid, by a physician. First aid means the onetime treatment or observation of  
14 scratches, cuts not requiring stitches, burns, splinters, and contusions, or a  
15 diagnostic procedure, including examination and X-rays, which does not  
16 ordinarily require medical treatment even though provided by a physician or  
17 other licensed personnel.

18 (2) The occurrence results in damage to the device indicating a substantial defect in  
19 design, mechanics, structure, or equipment, affecting the future safe operation  
20 of the device. No reporting is required in the case of normal wear and tear.

21 (e) After the owner of the device subject to the provisions of this Article notifies the  
22 Commissioner of a serious injury or fatality, the Commissioner shall, with reasonable promptness,  
23 advise the owner whether the device shall remain shut down pending investigation and inspection  
24 or whether it can be placed back in service. In deciding whether the device shall remain shut down  
25 or whether it can be placed back in service, the Commissioner's sole consideration shall be the  
26 safety of participants and the general public.

27 (f) The Commissioner, without delay, after notification and determination that an  
28 occurrence involving injury or damage as specified in subsection (a) of this section has occurred,  
29 shall make a complete and thorough investigation of the occurrence. The report of the  
30 investigation shall be placed on file in the office of the Bureau and shall give in detail all facts and  
31 information available. The owner may submit for inclusion in the file results of investigations  
32 independent of the department's investigation.

33 (g) No person, following an occurrence as specified in subsection (a) of this section, shall  
34 operate, attempt to operate, use or move, or attempt to move such device or part thereof, without  
35 the approval of the Commissioner, unless so as to prevent injury to any person or persons.

36 (h) No person, following an occurrence as specified in subsection (a) of this section, shall  
37 remove or attempt to remove from the premises any damaged or undamaged part of such device or  
38 repair or attempt to repair any damaged part necessary to a complete and thorough investigation.  
39 The department must initiate its investigation within 24 hours of being notified.

40 (i) The owner shall document the accident, to include the full name, address, and  
41 telephone number of the injured person, a description of his or her injuries, the identification of the  
42 device involved, the names and addresses of the owner and employees who witnessed the  
43 accident, and any other pertinent information describing the events leading up to the accident.

44 (j) An owner or operator shall keep a record of every accident or fatality with the  
45 certificate of inspection, which shall be readily accessible to the general public. The record shall  
46 include the following information:

47 (1) The date of every accident or fatality.

48 (2) A description of the type of accident.

49 (3) The number of people injured or killed.

50 (4) A description of the types of injuries.

1       (k) The owner of the device shall retain all reports, documents, photographs, and records  
2 required by this Article for not less than three years from the date of the unscheduled cessation,  
3 imminent danger notification, or serious injury or fatality.

4       (l) If an owner violates any provision of this section of the Article, the Commissioner may  
5 permanently revoke the certificate of operation.

6 **"§ 95-112.14. Operator age requirement; operator impairment.**

7       (a) Any operator of a device subject to the provisions of this Article shall be at least 18  
8 years of age. An operator shall be in attendance at all times the device is in operation.

9       (b) No person shall operate a device subject to the provisions of this Article while under  
10 the influence of alcohol or any other impairing substance as defined by G.S. 20-4.01(14a). It shall  
11 be a violation of this subsection to knowingly permit the operation of any device subject to the  
12 provisions of this Article while the operator is under the influence of an impairing substance.

13 **"§ 95-112.15. Liability insurance.**

14       (a) No owner shall operate a device subject to the provisions of this Article unless at the  
15 time there is in existence a contract of insurance providing coverage of not less than one million  
16 dollars (\$1,000,000) per occurrence against liability for injury to persons or property arising out of  
17 the operation or use of such device. The insurance contract to be provided must be by any insurer  
18 or surety that is acceptable to the North Carolina Insurance Commissioner and approved or  
19 authorized to transact business in this State.

20       (b) No certificate of operation shall be issued by the Commissioner until such time as the  
21 owner or the owner's authorized agent provides proof of the required contract of insurance.

22       (c) The Commissioner shall have the right to request from the owner of a device regulated  
23 by this Article, or the owner's authorized agent, proof of the required contract of insurance, and  
24 upon failure of the owner or the owner's authorized agent to provide such proof, the Commissioner  
25 shall have the right to prevent the commencement of or to stop the operation of the device until  
26 such time as proof is provided.

27       (d) The Commissioner shall not accept any commercial general liability insurance policy  
28 unless it obligates the insurer to give written notice to the insured at least 15 days before any  
29 proposed cancellation, suspension, or nonrenewal of the policy. The owner or the owner's  
30 authorized agent shall immediately notify the Commissioner upon receipt of notice of  
31 cancellation, suspension, or nonrenewal of the policy.

32 **"§ 95-112.16. Violations; civil penalties; appeal; criminal penalties.**

33       (a) Any person who violates G.S. 95-112.11(a) or (b) (Operation without certificate;  
34 operation not in accordance with Article) is subject to a civil penalty not to exceed one thousand  
35 two hundred fifty dollars (\$1,250) for each section of this Article or rule or regulation adopted  
36 pursuant to this Article violated and for each day each device is so operated or used.

37       (b) Any person who violates G.S. 95-112.11(c) (Operation after refusal to issue or after  
38 revocation of license), G.S. 95-112.13 (Accidents, shut down, reporting), G.S. 95-112.14(a)  
39 (Operators; age requirement), or G.S. 95-112.15 (Liability insurance) is subject to a civil penalty  
40 not to exceed two thousand five hundred dollars (\$2,500) for each day each device is so operated  
41 or used.

42       (c) Any person who violates G.S. 95-291 (Operation of unsafe device) or G.S. 95-293(b)  
43 (Operator impairment) is subject to a civil penalty not to exceed five thousand dollars (\$5,000) for  
44 each day each device is so operated or used.

45       (d) In determining the amount of any penalty ordered under authority of this section, the  
46 Commissioner shall give due consideration to the appropriateness of the penalty with respect to  
47 the annual gross volume of the person being charged, the gravity of the violation, the good faith of  
48 the person, and the record of previous violations.

49       (e) The determination of the amount of the penalty by the Commissioner is final unless  
50 within 15 days after receipt of notice thereof by certified mail with return receipt, by signature  
51 confirmation as provided by the U.S. Postal Service, by a designated delivery service authorized



1 pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand delivery the person against  
2 whom such action was taken files a petition for a contested case under Chapter 150B of the  
3 General Statutes.

4 (f) The Commissioner may file in the office of the clerk of the superior court of the county  
5 wherein the person, against whom a civil penalty has been ordered, resides, or if a corporation is  
6 involved, in the county wherein the corporation maintains its principal place of business, or in the  
7 county wherein the violation occurred, a certified copy of a final order of the Commissioner  
8 unappealed from, or of a final order of the Commissioner affirmed upon appeal. The clerk of court  
9 shall enter judgment and notify the parties. Such judgment shall have the same effect, and all  
10 proceedings in relation thereto shall thereafter be the same, as though said judgment had been  
11 rendered in a suit duly heard and determined by the superior court of the General Court of Justice.

12 (g) Except as provided under subsection (h) of this section, any person who willfully  
13 violates any provision of this Article is guilty of a Class 2 misdemeanor, which may include a fine  
14 of not more than ten thousand dollars (\$10,000); except that if the conviction is for a violation  
15 committed after a first conviction of the person, the person shall be guilty of a Class 1  
16 misdemeanor, which may include a fine of not more than twenty thousand dollars (\$20,000).

17 (h) Any person who willfully violates any provision of this Article, and that violation  
18 causes the serious injury or death of any person, then the person is guilty of a Class E felony,  
19 which shall include a fine.

20 (i) Nothing in this section prevents any prosecuting officer of the State of North Carolina  
21 from proceeding against a person who violates this Article on a prosecution charging any degree  
22 of willful or culpable homicide.

23 **"§ 95-112.17. Denial of permission to enter device subject to the provisions of this Article.**

24 The owner or operator of a device subject to the provisions of this Article may deny any  
25 person entrance to any device if he or she believes such entry may jeopardize the safety of the  
26 person desiring entry, riders, or other persons.

27 **"§ 95-112.18. Legal representation.**

28 It shall be the duty of the Attorney General of North Carolina, when requested, to represent the  
29 Department of Labor in actions or proceedings in connection with this Article or the rules adopted  
30 thereunder.

31 **"§ 95-112.19. Authorization for similar safety and health federal-State programs.**

32 Consistent with the requirements and conditions provided in this Article and the rules adopted  
33 thereunder, the State, upon recommendation of the Commissioner of Labor, may enter into  
34 agreements or arrangements with appropriate federal agencies for the purpose of administering the  
35 enforcement of federal statutes, rules, and regulations governing devices subject to the provisions  
36 of this Article.

37 **"§ 95-112.20. Confidentiality of trade secrets.**

38 All information reported to or otherwise obtained by the Commissioner or the Commissioner's  
39 agents or representatives in connection with any inspection or proceeding under this Article or the  
40 rules and regulations adopted thereunder which contains or might reveal a trade secret shall be  
41 considered confidential, except as to carrying out this Article and the rules adopted thereunder or  
42 when it is relevant in any proceeding under the same. In any proceeding, the Commissioner or the  
43 Court shall issue orders as may be appropriate to protect the confidentiality of trade secrets.

44 **"§ 95-112.21. Construction of Article and rules and regulations and severability.**

45 This Article and the rules adopted thereunder shall receive a liberal construction to the end that  
46 the welfare of the people may be protected. If any provisions of either or the application thereof to  
47 any person or circumstances is held to be invalid, such invalidity shall not affect those provisions  
48 or applications which can be given effect without the invalid provision or application, and, to that  
49 end, the provisions of this Article are severable."

50 **SECTION 3.** The Department of Labor may adopt rules, including temporary rules,  
51 design and distribute forms, begin accepting applications, and establish and collect fees in order

1 that a device subject to the provisions of this act that is existing on or before December 1, 2017, is  
2 in compliance with the provisions of this act and has received a certificate of operation from the  
3 Department of Labor by that date.

4 **SECTION 4.** Section 2 of this act becomes effective December 1, 2017.  
5 G.S. 95-112.16(g) and (h), as enacted by Section 2 of this act, apply to violations occurring on or  
6 after December 1, 2017.