

GENERAL ASSEMBLY OF NORTH CAROLINA  
1985 SESSION

CHAPTER 990  
HOUSE BILL 578

AN ACT TO CONFIRM THE ESTABLISHMENT OF AN ELEVATOR AND AMUSEMENT DEVICE DIVISION IN THE DEPARTMENT OF LABOR AND TO SET OUT THE POWERS AND DUTIES OF THE COMMISSIONER OF LABOR DEALING WITH THE REGULATION OF ELEVATORS, AMUSEMENT DEVICES AND RELATED EQUIPMENT.

The General Assembly of North Carolina enacts:

Section 1. Chapter 95 of the General Statutes is amended by adding a new Article to read:

"Article 14A.

"Elevator Safety Act of North Carolina.

"§ 95-110.1. **Short title and legislative purpose.** – (a) This Article shall be known as the Elevator Safety Act of North Carolina.

(b) The General Assembly finds that the use of unsafe and defective lifting devices imposes a substantial probability of serious and preventable injury to employees and the public exposed to unsafe conditions and that prevention of these injuries and protection of employees and the public from unsafe conditions is in the best interests and welfare of the people of the State.

"§ 95-110.2. **Scope.** – This Article shall govern the design, construction, installation, plans review, testing, inspection, certification, operation, use, maintenance, alteration, relocation and investigation of accidents involving:

- (1) Elevators, dumbwaiters, escalators, and moving walks;
- (2) Personnel hoists;
- (3) Inclined stairway chair lifts;
- (4) Inclined and vertical wheelchair lifts;
- (5) Manlifts; and
- (6) Special equipment.

This Article shall not apply to devices and equipment located and operated in a single family residence, to conveyors and related equipment within the scope of the American National Standard Safety Standard for Conveyors and Related Equipment (ANSI/ASME B20.1) constructed, installed and used exclusively for the movement of materials, or to mining equipment specifically covered by the Federal Mine Safety and Health Act or the Mine Safety and Health Act of North Carolina or the rules and regulations adopted pursuant thereto.

"§ 95-110.3. **Definition.** – (a) The term 'Commissioner' shall mean the North Carolina Commissioner of Labor or his authorized representative.

(b) The term 'Director' shall mean the Director of the Elevator and Amusement Device Division of the North Carolina Department of Labor.

(c) The term 'dumbwaiter' shall mean a hoisting and lowering mechanism equipped with a car or platform which moves in guides in a substantially vertical direction, the floor area of which does not exceed nine square feet, the total inside height of which, whether or not provided with fixed or removable shelves, does not exceed four feet, the capacity of which does not exceed 500 pounds, and which is used exclusively for carrying materials.

(d) The term 'elevator' shall mean a hoisting and lowering mechanism equipped with a car or platform which moves in guides, and which serves two or more floors of a building or structure.

(e) The term 'escalator' shall mean a power driven, inclined continuous stairway used for raising and lowering passengers.

(f) The term 'inclined stairway chair lift' shall mean a hoisting and lowering mechanism with one or more chairs or a platform for one or more wheelchairs installed on a stairway for the purpose of transporting a physically disabled person.

(g) The term 'inclined or vertical wheelchair lift' shall mean a powered platform-elevating device used to transport a physically disabled person in a wheelchair.

(h) The term 'manlift' shall mean platforms or brackets and accompanying handholds, mounted on, or attached to, an endless belt operating vertically in one direction only and being supported by, and driven through, pulleys at the top and bottom and intended primarily for the conveyance of persons.

(i) The term 'moving walk' shall mean a type of passenger carrying device on which passengers stand or walk and in which the passenger carrying surface remains parallel to its direction of motion and is uninterrupted.

(j) The term 'operator' shall mean any person having direct control over the operation of any covered device or equipment.

(k) The term 'owner' shall mean any person or authorized agent of such person who owns a device or equipment subject to regulation under this Article, or in the event the device or equipment is leased, the lessee. The term 'owner' also shall include the State of North Carolina or any political subdivision thereof or any unit of local government.

(l) The term 'person' shall mean any individual, association, partnership, firm, corporation, private organization, or the State of North Carolina or any political subdivision thereof or any unit of local government.

(m) The term 'personnel hoist' shall mean an elevator installed inside or outside of buildings during construction, alteration or demolition and used primarily to raise and lower workers and other persons connected with or related to the building project.

(n) The term 'special equipment' shall mean any permanently or semi-permanently located device, manually or power-operated, used for moving or lifting persons or persons and materials but not considered as an elevator, escalator, dumbwaiter, moving walk, personnel hoist, inclined stairway chair lift, inclined or vertical wheelchair lift, or manlift. Special equipment shall include, but not be limited

to, manhoists, lift bridges, elevators which are used only for handling building materials and workmen during construction, and stage and orchestra lifts.

**"§ 95-110.4. Elevator and Amusement Device Division established.** – There is hereby created an Elevator and Amusement Device Division within the Department of Labor. The Commissioner shall appoint a director of the Elevator and Amusement Device Division and such other employees as the Commissioner deems necessary to assist the director in administering the provisions of this Article.

**"§ 95-110.5. Powers and duties of Commissioner.** – The Commissioner of Labor is hereby empowered:

- (1) To delegate to the Director of the Elevator and Amusement Device Division such powers, duties and responsibilities as the Commissioner determines will best serve the public interest in the safe operation of lifting devices and equipment;
- (2) To supervise the Director of the Elevator and Amusement Device Division;
- (3) To adopt, modify, or revoke such rules and regulations as are necessary for the purpose of carrying out the provisions of this Article including, but not limited to, those governing the design, construction, installation, plans review, testing, inspection, certification, operation, use, maintenance, alteration and relocation of devices and equipment subject to the provisions of this Article. The rules and regulations promulgated pursuant to this rulemaking authority shall conform with good engineering practice as evidenced generally by the most recent editions of the American National Standard Safety Code for Elevators, Dumbwaiters, Escalators and Moving Walks, the National Electrical Code, the American National Standard Safety Requirements for Personnel Hoists, the American National Standard Safety Code for Manlifts, the American National Standard Safety Standard for Conveyors and Related Equipment and similar codes promulgated by agencies engaged in research concerning strength of material, safe design, and other factors bearing upon the safe operation of the devices and equipment subject to the provisions of this Article. The rules and regulations may apply different standards to devices and equipment subject to this Article depending upon their date of installation. The rules and regulations for special equipment shall not adopt specifically any portion of the American National Standard Safety Code for Elevators, Dumbwaiters, Escalators and Moving Walks to inclined and vertical reciprocating conveyors;
- (4) To enforce rules and regulations adopted under authority of this Article;
- (5) To inspect and have tested for acceptance all new, altered or relocated devices or equipment subject to the provisions of this Article;

- (6) To make maintenance and periodic inspections and tests of all devices and equipment subject to the provisions of this Article as often as every six months;
- (7) To issue certificates of operation which certify for use such devices and equipment as are found to be in compliance with this Article and the rules and regulations promulgated thereunder;
- (8) To have free access, with or without notice, to the devices and equipment subject to the provisions of this Article, during reasonable hours, for purposes of inspection or testing;
- (9) To obtain an Administrative Search and Inspection Warrant in accordance with the provisions of Article 4A of Chapter 15 of the General Statutes;
- (10) To investigate accidents involving the devices and equipment subject to the provisions of this Article to determine the cause of such accident, and he shall have full subpoena powers in conducting such investigation;
- (11) To institute proceedings in the civil or criminal courts of this State, when a provision of this Article or the rules and regulations promulgated thereunder has been violated;
- (12) To issue a limited certificate of operation for any device or equipment subject to the provisions of this Article to allow the temporary or restricted use thereof;
- (13) To adopt, modify or revoke rules and regulations governing the qualifications of inspectors;
- (14) To grant exceptions from the requirements of the rules and regulations promulgated under authority of this Article and to permit the use of other devices when such exceptions and uses will not expose the public to an unsafe condition likely to result in serious personal injury or property damage;
- (15) To require that a construction permit must be obtained from the Commissioner before any device or equipment subject to the provisions of this Article is installed, altered or moved from one place to another and to require that the Commissioner must be supplied with whatever plans, diagrams or other data he deems necessary to determine whether or not the proposed construction is in compliance with the provisions of this Article and the rules and regulations promulgated thereunder;
- (16) To prohibit the use of any device or equipment subject to the provisions of this Article which is found upon inspection to expose the public to an unsafe condition likely to cause personal injury or property damage. Such device or equipment shall be made operational only upon the Commissioner's determination that such device or equipment has been made safe;

- (17) To order the payment of all civil penalties provided by this Article. Funds collected pursuant to a civil penalty order shall be deposited with the State Treasurer;
- (18) To require that any device or equipment subject to the provisions of this Article which has been out- of-service and not continuously maintained for one or more years shall not be returned to service without first complying with all rules and regulations governing new installations; and
- (19) To coordinate enforcement and inspection activity relative to equipment, devices and operations covered by this Article in order to minimize duplication of liability or regulatory responsibility on the part of the employer or owner.

**"§ 95-110.6. Noncomplying devices and equipment; appeal.** – (a) Whenever the Commissioner determines that a device or equipment is subject to the provisions of this Article, and that the operation of such device or equipment is exposing the public to an unsafe condition likely to result in serious personal injury or property damage, he may immediately order in writing that the use of the device or equipment be stopped or limited until such time as he determines that the device or equipment has been made safe for use by the public.

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

(c) Whenever action is taken under this section, the affected party shall be given notice of the availability of an administrative hearing and of judicial review in accordance with Chapter 150B of the General Statutes, the Administrative Procedure Act.

**"§ 95-110.7. Operation without certificate; operation not in accordance with Article or rules and regulations; operation after refusal to issue or after revocation of certificate.** – (a) No person shall operate or permit to be operated or use any device or equipment subject to the provisions of this Article without a valid certificate of operation unless the absence of a valid certificate is the result of the Commissioner's failure to inspect such device.

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

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

**"§ 95-110.8. Operation of unsafe device or equipment.** – No person shall operate, permit to be operated or use any device or equipment subject to the provisions of this Article if such person knows or reasonably should know that such operation or use will expose the public to an unsafe condition which is likely to result in personal injury or property damage.

**"§ 95-110.9. Reports required.** – (a) The owner of any device or equipment regulated under the provisions of this Article, or his authorized agent, shall within 24 hours notify the Commissioner of each and every occurrence involving such device or equipment when:

- (1) The occurrence results in death or injury requiring medical treatment, other than first aid, by a physician. First aid means the one time treatment or observation of scratches, cuts not requiring stitches, burns, splinters and contusions or a diagnostic procedure, including examination and x- rays, which does not ordinarily require medical treatment even though provided by a physician or other licensed personnel; or
- (2) The occurrence results in damage to the device indicating a substantial defect in design, mechanics, structure or equipment, affecting the future safe operation of the device. No reporting is required in the case of normal wear and tear.

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

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

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

**"§ 95-110.10. Violations; civil penalties; appeals.** – (a) Any person who violates G.S. 95-110.7(a) or (b) (Operation without certificate; operation not in accordance with Article or rules and regulations) shall be subject to a civil penalty not to exceed two hundred fifty dollars (\$250.00) for each day each device or equipment is so operated or used.

(b) Any person who violates G.S. 95-110.7(c) (Operation after refusal to issue or after revocation of certificate) or G.S. 95- 110.9(c) (Reports required) shall be subject to a civil penalty not to exceed five hundred dollars (\$500.00) for each day any such device or equipment is operated or used.

(c) Any person who violates the provisions of G.S. 95-110.9(d) (Reports required) shall be subject to a civil penalty not to exceed five hundred dollars (\$500.00).

(d) In determining the amount of any penalty ordered under authority of this section, the Commissioner shall give due consideration to the appropriateness of the

penalty with respect to the size of the business of the person being charged, the gravity of the violation, the good faith of the person and the record of previous violations.

(e) The determination of the amount of the penalty by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail the person charged with the violation takes exception to the determination in which event the final determination of the penalty shall be made in an administrative proceeding and in a judicial proceeding pursuant to Chapter 150B of the General Statutes, the Administrative Procedure Act.

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

**"§ 95-110.11. Violations; criminal penalties.** – (a) Any person who violates G.S. 95-110.8 (Operation of unsafe device or equipment) shall be guilty of a misdemeanor and upon conviction thereof shall be fined one thousand dollars (\$1,000), or imprisoned for a period of six months, or both, in the discretion of the court.

(b) Any person misrepresenting himself as an authorized inspector administering or enforcing the provisions of this Article or the rules and regulations promulgated thereunder shall be guilty of a misdemeanor and upon conviction thereof shall be fined one thousand dollars (\$1,000), or imprisoned for a period of 6 months, or both, in the discretion of the court.

(c) Any person knowingly making a material and false statement, representation or certification in any application, record, report, plan or any other document filed or required to be maintained pursuant to this Article or the rules and regulations promulgated thereunder shall be fined a maximum of five thousand dollars (\$5,000), or imprisoned for not more than six months, or both, in the discretion of the court.

**"§ 95-110.12. Legal representation.** – It shall be the duty of the Attorney General of North Carolina, when requested, to represent the Department of Labor in actions or proceedings in connection with this Article or the rules and regulations promulgated thereunder.

**"§ 95-110.13. Authorization for similar safety and health federal-State programs.** – Consistent with the requirements and conditions provided in this Article and the rules and regulations promulgated thereunder, the State, upon recommendation of the Commissioner of Labor, may enter into agreements or arrangements with appropriate federal agencies for the purpose of administering the enforcement of federal statutes and rules and regulations governing devices and equipment subject to the provisions of this Article.

**"§ 95-110.14. Confidentiality of trade secrets.** – All information reported to or otherwise obtained by the Commissioner or his agents or representatives in connection with any inspection or proceeding under this Article or the rules and regulations promulgated thereunder which contains or might reveal a trade secret shall be considered confidential, except as to carrying out this Article and the rules and regulations promulgated thereunder, or when it is relevant in any proceeding under the same. In any such proceeding the Commissioner or the court shall issue such orders as may be appropriate to protect the confidentiality of trade secrets.

**"§ 95-110.15. Construction of Article and rules and regulations and severability.** – This Article and the rules and regulations promulgated thereunder shall receive a liberal construction to the end that the welfare of the people may be protected. If any provisions of either or the application thereof to any person or circumstances is held to be invalid, such invalidity shall not affect those provisions or applications which can be given effect without the invalid provision or application, and to that end the provisions of this Article are severable."

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

"Article 14B.

"Amusement Device Safety Act of North Carolina.

**"§ 95-111.1. Short title and legislative purpose.** – (a) This Article shall be known as the 'Amusement Device Safety Act of North Carolina'.

(b) The General Assembly finds that although most amusement devices are free from defect and operated in a safe manner, those which are not impose a substantial probability of serious and preventable injury to the public. Protection of the public from exposure to such unsafe conditions and the prevention of injuries is in the best interest and welfare of the people of the State.

(c) It is the intent of this Article that amusement devices shall be designed, constructed, assembled or disassembled, maintained, and operated so as to prevent injuries.

**"§ 95-111.2. Scope.** – (a) This Article shall govern the design, construction, installation, plans review, testing, inspection, certification, operation, use, maintenance, alteration, relocation and investigation of accidents involving amusement devices.

(b) This Article shall not apply to any single passenger coin- operated device, manually, mechanically, or electrically operated which customarily is placed, singly or in groups, in a public location and which does not normally require the supervision or services of an operator.

**"§ 95-111.3. Definitions.** – (a) The term 'amusement device' shall mean any device or attraction that carries or conveys or permits persons to walk along, around or over a fixed or restricted route or course or within a defined area including the entrances and exits thereto, for the purpose of giving such persons amusement, pleasure, thrills or excitement. The term shall include but not be limited to roller coasters, Ferris wheels, merry-go-rounds, glasshouses, waterslides, and walk- through dark houses.

(b) The term 'amusement park' shall mean any tract or area used principally as a permanent location for amusement devices.



(c) The term 'Commissioner' shall mean the North Carolina Commissioner of Labor or his authorized representative.

(d) The term 'Director' shall mean the Director of the Elevator and Amusement Device Division of the North Carolina Department of Labor.

(e) The term 'operator' shall mean any person having direct control of the operation of an amusement device.

(f) The term 'owner' shall mean any person or authorized agent of such person who owns an amusement device or in the event such device is leased, the lessee. The term 'owner' also shall include the State of North Carolina or any political subdivision thereof or any unit of local government.

(g) The term 'person' shall mean any individual, association, partnership, firm, corporation, private organization, or the State of North Carolina or any political subdivision thereof or any unit of local government.

**"§ 95-111.4. Powers and duties of Commissioner.** – The Commissioner of Labor is hereby empowered:

- (1) To delegate to the Director of the Elevator and Amusement Device Division such powers, duties and responsibilities as the Commissioner determines will best serve the public interest in the safe operation of amusement devices;
- (2) To supervise the Director of the Elevator and Amusement Device Division;
- (3) To adopt, modify, or revoke such rules and regulations as are necessary for the purpose of carrying out the provisions of this Article including, but not limited to, those governing the design, construction, installation, plans review, testing, inspection, certification, operation, use, maintenance, alteration and relocation of devices subject to the provisions of this Article. The rules and regulations promulgated pursuant to this rulemaking authority shall conform with good engineering and safety standards, formulas and practices;
- (4) To enforce rules and regulations adopted under authority of this Article;
- (5) To inspect and have tested for acceptance all new and relocated devices subject to the provisions of this Article. Relocated amusement devices shall be inspected upon reassembly at each new location within this State;
- (6) To inspect amusement devices which have been substantially rebuilt or substantially modified so as to change the original action, structure or capacity of the device;
- (7) To make maintenance and periodic inspections and tests of all devices subject to the provisions of this Article. Devices located in amusement parks shall be inspected at least once annually;
- (8) To issue certificates of operation which certify for use such devices as are found to be in compliance with this Article and the rules and regulations promulgated thereunder;

- (9) To have reasonable access, with or without notice, to the devices subject to the provisions of this Article during reasonable hours, for purposes of inspection or testing;
- (10) To obtain an Administrative Search and Inspection Warrant in accordance with the provisions of Article 4A of Chapter 15 of the General Statutes;
- (11) To investigate accidents involving devices subject to the provisions of this Article to determine the cause of such accident, and he shall have full subpoena powers in conducting such investigation;
- (12) To institute proceedings in the civil courts of this State, when a provision of this Article or the rules and regulations promulgated thereunder has been violated;
- (13) To adopt, modify or revoke rules and regulations governing the qualifications of inspectors;
- (14) To grant exceptions from the requirements of the rules and regulations promulgated under authority of this Article and to permit the use of other devices when such exceptions and uses will not expose the public to an unsafe condition likely to result in serious personal injury or property damage;
- (15) To require that before any device subject to the provisions of this Article is erected in this State, or before any additions or alterations which substantially change such device are made, or before the physical spacing between such devices is changed, the owner or his authorized agent shall file with the Commissioner a written notice of his intention to do so and the type of device involved. Should circumstances necessitate, the Commissioner may require that such owner or his authorized agent furnish a copy of the plans, diagrams, specifications or stress analyses of such device before the inspection of same. When such plans, diagrams, specifications or stress analyses are requested by the Commissioner, he shall review them within 10 days of receipt, and upon approval, he shall authorize the device for use by the public;
- (16) To prohibit the use of any device subject to the provisions of this Article which is found upon inspection to expose the public to an unsafe condition likely to cause personal injury or property damage. Such device shall be made operational only upon the Commissioner's determination that such device has been made safe;
- (17) To order the payment of all civil penalties provided by this Article. Funds collected pursuant to a civil penalty order shall be deposited with the State Treasurer; and
- (18) To coordinate enforcement and inspection activity relative to equipment, devices and operations covered by this Article in order to minimize duplication of liability or regulatory responsibility on the part of the employer or owner.

**"§ 95-111.5. Pre-opening inspection and test; records; revocation of certificate of operation.** – (a) An owner of a device subject to the provisions of this Article, or his authorized agent, is hereby required to make a pre-opening inspection and test of such device, prior to admitting the public, each day such device is intended to be used.

(b) An owner of a device subject to the provisions of this Article, or his authorized agent, is hereby required to maintain for at least 30 days a signed record of the required pre-opening inspection and test and such other pertinent information as the Commissioner may require by rule or regulation.

(c) The Commissioner is hereby empowered to revoke the certificate of operation for any device regulated by this Article upon failure by the owner or his authorized agent to make the required pre-opening inspection and test or to maintain the required record.

**"§ 95-111.6. Noncomplying devices; appeal.** – (a) Whenever the Commissioner determines that a device is subject to the provisions of this Article and the operation of such device is exposing the public to an unsafe condition likely to result in serious personal injury or property damage, he immediately may order in writing that the use of the device be stopped or limited until such time as he determines that the device has been made safe for use by the public.

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

(c) Whenever action is taken under this section, the affected party shall be given notice of the availability of an administrative hearing and of judicial review in accordance with Chapter 150B of the General Statutes, the Administrative Procedure Act.

**"§ 95-111.7. Operation without certificate; operation not in accordance with Article or rules and regulations; operation after refusal to issue or after revocation of certificate.** – (a) No person shall operate or permit to be operated or use any device subject to the provisions of this Article without a valid certificate of operation.

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

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

**"§ 95-111.8. Location notice.** – No person shall operate for the public or permit the operation for the public any device subject to the provisions of this Article after initial assembly or after reassembly at any location within this State without first notifying the Commissioner of the intention to operate for the public. Written notice of a planned schedule of operation or use shall be received at least five days prior to the first planned date of operation or use. Notice of unscheduled use shall be given immediately to the Commissioner by telephone or telegraph.

**"§ 95-111.9. Operation of unsafe device.** – No person shall operate, permit to be operated or use any device subject to the provisions of this Article if such person knows

or reasonably should know that such operation or use will expose the public to an unsafe condition which is likely to result in personal injury or property damage.

**"§ 95-111.10. Reports required.** – (a) The owner of any device regulated under the provisions of this Article, or his authorized agent, shall within 24 hours, notify the Commissioner of each and every occurrence involving such device when:

- (1) The occurrence results in death or injury requiring medical treatment, other than first aid, by a physician. First aid means the one time treatment or observation of scratches, cuts not requiring stitches, burns, splinters and contusions or a diagnostic procedure, including examination and x- rays, which does not ordinarily require medical treatment even though provided by a physician or other licensed personnel; or
- (2) The occurrence results in damage to the device indicating a substantial defect in design, mechanics, structure or equipment, affecting the future safe operation of the device. No reporting is required in the case of normal wear and tear.

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

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

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

**"§ 95-111.11. Operators.** – Any operator of a device subject to the provisions of this Article shall be at least 18 years of age. An operator shall operate no more than one device at any given time. An operator shall be in attendance at all times the device is in operation.

**"§ 95-111.12. Liability insurance.** – (a) No owner shall operate a device subject to the provisions of this Article, unless at the time, there is in existence a contract of insurance providing coverage of not less than one million dollars (\$1,000,000) per occurrence against liability for injury to persons or property arising out of the operation or use of such device. The insurance contract shall be provided by any insurer or surety that is acceptable to the North Carolina Insurance Commissioner and licensed to transact business in this State.

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

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

**"§ 95-111.13. Violations; civil penalties; appeal.** – (a) Any person who violates G.S. 95-111.7(a) or (b) (Operation without certificate; operation not in accordance with Article or rules and regulations) shall be subject to a civil penalty not to exceed two hundred fifty dollars (\$250.00) for each day each device is so operated or used.

(b) Any person who violates G.S. 95-111.7(c) (Operation after refusal to issue or after revocation of certificate) or G.S. 95- 111.10(c) (Reports required) or G.S. 95-111.12 (Liability insurance) shall be subject to a civil penalty not to exceed five hundred dollars (\$500.00) for each day each device is so operated or used.

(c) Any person who violates G.S. 95-111.8 (Location notice) shall be subject to a civil penalty not to exceed five hundred dollars (\$500.00) for each day any device is operated or used without the location notice having been provided.

(d) Any person who violates the provisions of G.S. 95- 111.10(d) (Reports required) shall be subject to a civil penalty not to exceed five hundred dollars (\$500.00).

(e) Any person who violates G.S. 95-111.9 (Operation of unsafe device) shall be subject to a civil penalty not to exceed one thousand dollars (\$1,000).

(f) In determining the amount of any penalty ordered under authority of this section, the Commissioner shall give due consideration to the appropriateness of the penalty with respect to the size of the business of the person being charged, the gravity of the violation, the good faith of the person and the record of previous violations.

(g) The determination of the amount of the penalty by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail, the person charged with the violation takes exception to the determination, in which event final determination of the penalty shall be made in an administrative proceeding and in a judicial proceeding pursuant to Chapter 150B of the General Statutes, the Administrative Procedure Act.

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

**"§ 95-111.14. Denial of permission to enter amusement device.** – The owner or amusement device operator may deny any person entrance to an amusement device if he or she believes such entry may jeopardize the safety of the person desiring entry, riders or other persons.

**"§ 95-111.15. Legal representation.** – It shall be the duty of the Attorney General of North Carolina, when requested, to represent the Department of Labor in actions or proceedings in connection with this Article or the rules and regulations promulgated thereunder.

**"§ 95-111.16. Authorization for similar safety and health federal-State programs.** – Consistent with the requirements and conditions provided in this Article and the rules and regulations promulgated thereunder, the State, upon recommendation of the Commissioner of Labor, may enter into agreements or arrangements with appropriate federal agencies for the purpose of administering the enforcement of federal statutes and rules and regulations governing devices subject to the provisions of this Article.

**"§ 95-111.17. Confidentiality of trade secrets.** – All information reported to or otherwise obtained by the Commissioner or his agents or representatives in connection with any inspection or proceeding under this Article or the rules and regulations promulgated thereunder which contains or might reveal a trade secret shall be considered confidential, except as to carrying out this Article and the rules and regulations promulgated thereunder or when it is relevant in any proceeding under the same. In any such proceeding the Commissioner or the Court shall issue such orders as may be appropriate to protect the confidentiality of trade secrets.

**"§ 95-111.18. Construction of Article and rules and regulations and severability.** – This Article and the rules and regulations promulgated thereunder shall receive a liberal construction to the end that the welfare of the people may be protected. If any provisions of either or the application thereof to any person or circumstances is held to be invalid, such invalidity shall not affect those provisions or applications which can be given effect without the invalid provision or application, and to that end the provisions of this Article are severable."

Sec. 3. G.S. 95-109 is hereby repealed.

Sec. 4. This act shall become effective on January 1, 1987. The Commissioner of Labor may begin official rulemaking pursuant to this act immediately upon ratification with such rules as he may adopt to become effective no earlier than January 1, 1987.

In the General Assembly read three times and ratified, this the 12th day of July, 1986.