

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

SESSION LAW 2015-152
HOUSE BILL 39

AN ACT TO INCREASE THE PENALTIES FOR THE ILLEGAL OPERATION OF AMUSEMENT DEVICES AND TO DIRECT THE DEPARTMENT OF LABOR TO STUDY THE REGULATION OF THE OPERATION OF ZIP-LINES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 95-111.3 reads as rewritten:

"§ 95-111.3. Definitions.

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

(b1) The term "annual gross volume" shall mean the gross receipts a person or device receives from all types of sales made and business done during a 12-month period.

~~(b1)~~(b2) The term "carnival area" shall mean any area, track, or structure that is rented, leased, or owned as a temporary location for amusement devices.

...
(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.

...."

SECTION 2. G.S. 95-111.13 reads as rewritten:

"§ 95-111.13. Violations; civil penalties; appeal; criminal penalties.

(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 or G.S. 95-111.8 (Location notice) is subject to a civil penalty not to exceed two hundred fifty dollars (\$250.00) one thousand two hundred fifty dollars (\$1,250) for each rule, regulation, or section of this Article violated and~~ 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 is subject to a civil penalty not to exceed five hundred dollars (\$500.00) two thousand five hundred dollars (\$2,500) 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) or knowingly permits the operation of an amusement device in violation of G.S. 95-111.11(a) (Operator requirements) ~~shall be is subject to a civil penalty not to exceed five hundred dollars (\$500.00) two thousand five hundred dollars (\$2,500) for each day each device is so operated or used.~~

(e) Any person who violates G.S. 95-111.9 (Operation of unsafe device) or G.S. 95-111.11(b) (Operation of an amusement device while impaired) ~~shall be is subject to a civil penalty not to exceed one thousand dollars (\$1,000) five thousand dollars (\$5,000) for each day each device is so operated or used.~~

(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~~ annual gross volume of the person being charged, the gravity of the violation, the good faith of the ~~person~~ person, and the record of previous violations.



(g) The determination of the amount of the penalty by the Commissioner ~~shall be is~~ final, unless within 15 days after receipt of notice thereof by certified mail with return receipt, by signature confirmation as provided by the U.S. Postal Service, by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand delivery, 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.

~~(i) Any Except as provided under subsection (j) of this section, any person who willfully violates any provision of this Article, and the violation causes the death of any person, shall be Article is guilty of a Class 2 misdemeanor, which may include a fine of not more than ten thousand dollars (\$10,000); except that if the conviction is for a violation committed after a first conviction of such the person, the person shall be guilty of a Class 1 misdemeanor, which may include a fine of not more than twenty thousand dollars (\$20,000). This subsection shall not prevent any prosecuting officer of the State of North Carolina from proceeding against such person on a prosecution charging any degree of willful or culpable homicide.~~

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

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

SECTION 3. G.S. 95-111.12(a) reads as rewritten:

"(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 or there is in existence a contract of insurance providing coverage of not less than five hundred thousand dollars (\$500,000) per occurrence against liability for injury to persons or property arising out of the operation or use of the amusement ~~devices device~~ if the annual gross volume of the ~~devices device~~ does not exceed two hundred seventy-five thousand dollars (\$275,000); provided waterslides shall not be required to be insured as herein provided for an amount in excess of one hundred thousand dollars (\$100,000) per occurrence. The insurance contract to be provided must be by any insurer or surety that is acceptable to the North Carolina Insurance Commissioner and authorized to transact business in this State; provided, however, that insurance for waterslides may be purchased under Article 21 of Chapter 58 of the General Statutes or under G.S. 58-28-5(b)."

SECTION 4. The General Assembly recognizes that the unsafe operation of zip-lines places the health, safety, and welfare of the public at risk. The Department of Labor (Department) shall study the need for regulation of zip-line operations. The study shall include the following issues:

- (1) The number of zip-line operations in the State, excluding zip-lines operated on private residence property.
- (2) Whether any counties or cities in the State regulate zip-lines by ordinance and the content of any such ordinances.
- (3) The reasons for the specific statutory exclusion of zip-lines from the definition of "amusement device" that was enacted in S.L. 2011-36 and whether this exclusion should be repealed.
- (4) The consequences and risks to the public of failure to regulate zip-line operations.

- (5) The types of liability insurance coverage recommended for zip-line operations and the costs and availability of such coverage.
- (6) The number and nature of reported accidents and injuries involving zip-lines in the State over the last five years.
- (7) Protections available under existing law to zip-line amusement operators and participants.
- (8) Costs associated with safety inspections of zip-line equipment, gear, and operations.
- (9) A summary and analysis of other states' laws, ordinances, and regulations for zip-lines and for amusement rides that include zip-lines.
- (10) Any federal standards that may apply to zip-lines.
- (11) Any training requirements, certifications, and standards recommended for zip-line operators and employees.
- (12) Strategies for addressing the safe operations of zip-lines.
- (13) Possible regulatory bodies for zip-line operations.
- (14) Any other issues the Department deems relevant.

The Department shall consult with the Department of Insurance, the Association for Challenge Course Technology (ACCT), the American Society for Testing and Materials (ASTM), and any other relevant federal or State agencies in conducting this study and formulating recommendations. The Department of Labor shall submit a report of its findings and recommendations, including any proposed legislation, to the Speaker of the House of Representatives and the President Pro Tempore of the Senate, the chairs of the House Committee on Agriculture, and the chairs of the Senate Committee on Agriculture, Environment, and Natural Resources on or before February 1, 2016. The Department of Labor shall conduct the study within existing funds.

SECTION 5. G.S. 95-120.1(a)(2) reads as rewritten:

"(2) A contract of insurance providing coverage of not less than five hundred thousand dollars (\$500,000) per occurrence against liability for injury to persons or property arising out of the operation or use of the devices if the annual gross volume of the receipts of the devices as defined in G.S. 95-111.3(b1) does not exceed two hundred seventy-five thousand dollars (\$275,000)."

SECTION 6. G.S. 95-111.13(i) and (j), as enacted in Section 2 of this act, become effective December 1, 2015, and apply to violations occurring on or after that date. The remainder of Section 2 of this act is effective when this act becomes law and applies to violations occurring on or after that date. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 15th day of July, 2015.

s/ Daniel J. Forest
President of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Pat McCrory
Governor

Approved 5:30 p.m. this 16th day of July, 2015