

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H

1

HOUSE BILL 1043

Short Title: Zip Line and Challenge Course Safety Act. (Public)

Sponsors: Representatives Davis and Howard (Primary Sponsors).

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary III, if favorable, Finance

May 5, 2016

1 A BILL TO BE ENTITLED
2 AN ACT TO REGULATE ZIP LINES AND CHALLENGE COURSES.
3 The General Assembly of North Carolina enacts:

4 **SECTION 1.** Chapter 95 of the General Statutes is amended by adding a new Article
5 to read:

6 "Article 24.

7 "Zip Line and Challenge Course Safety.

8 **"§ 95-280. Short title and legislative purpose.**

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

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

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

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

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

24 **"§ 95-281. Scope.**

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

29 (b) This Article shall not apply to any zip line, aerial adventure park, canopy tour,
30 challenge course, or other similar devices installed at a private residence.

31 **"§ 95-282. Definitions.**

32 The following definition apply in this Article:

33 (1) ACCT. – Association for Challenge Course Technology.

34 (2) Aerial adventure park. – A self-guided challenge course that is open to the
35 public.



- 1 (3) Bureau. – Elevator and Amusement Device Bureau of the North Carolina
2 Department of Labor.
- 3 (4) Canopy tour. – A belayed aerial recreational or educational, guided or
4 self-guided, traverse or discovery tour of the forest canopy, flora and fauna, and
5 related ecologically significant areas most commonly by means of a series of
6 zip lines or aerial walkways with platforms.
- 7 (5) Challenge course. – Any apparatus or facility specifically designed and/or
8 constructed for the use of individuals or teams, which through high or low
9 nonspotted, spotted, or belayed activities, under trained facilitated supervision,
10 guided or self-guided, are utilized as elements of experiential learning programs
11 or curriculums or as adventure/challenge recreational components or courses.
12 Such facility or facilities usually consists of one or more elements that
13 challenge participants and include zip line tours, canopy tours, or aerial
14 adventure/trekking parks.
- 15 (6) Challenge course standards. – Any standard adopted pursuant to G.S. 95-284.
- 16 (7) Chief. – The Chief of the Elevator and Amusement Device Bureau of the North
17 Carolina Department of Labor.
- 18 (8) Commissioner. – Commissioner of Labor of North Carolina.
- 19 (9) ERCA. – European Ropes Course Association.
- 20 (10) Imminent danger. – Practice or condition which could reasonably be expected
21 to cause death or serious injury to participants, operators, or the general public.
- 22 (11) Operator. – Any person, partnership, corporation, or other commercial entity,
23 and their agents, officers, employees, or representatives, who has operational
24 responsibility for any device subject to the provisions of this Article.
- 25 (12) Owner. – Any person or authorized agent of such person who owns a device
26 subject to the provisions of this Article or in the event such device is leased, the
27 lessee. The term "owner" also shall include the State of North Carolina or any
28 political subdivision thereof or any unit of local government.
- 29 (13) Participant. – Any person who engages in activities on a device subject to the
30 provisions of this Article individually or in a group activity supervised by an
31 operator of such a device.
- 32 (14) PRCA. – Professional Ropes Course Association.
- 33 (15) Qualified inspector. – A professional inspector who is certified by the Bureau
34 pursuant to G.S. 95-287, or a person employed by the Bureau who meets the
35 training and experience requirements of a qualified inspector pursuant to
36 G.S. 95-287.
- 37 (16) Serious injury. – An injury that is directly related to any mechanical, electrical,
38 operational, or structural malfunction of a device subject to the provisions of
39 this Article that results in death, loss of consciousness, or requires medical
40 treatment other than first aid by a physician or other medical professional for
41 which a record is created.
- 42 (17) Third-party inspector. – A qualified inspector, as defined in this section, not
43 directly employed by the operator or parent company of the device subject to
44 the provisions of this Article, original equipment manufacturer, or vendor and
45 not offering other services to the operator or parent company of the device
46 subject to the provisions of this Article.
- 47 (18) Zip line. – A lifeline suspended between support structures that enables a
48 person attached to a pulley to traverse from one point to another propelled by
49 the force of gravity or a passive method of controlled acceleration.
- 50 (19) Zip line tour. – A belayed recreational or educational, guided or self-guided,
51 course or tour traversing areas of scenic, ecological, and/or cultural

1 significance. Zip line tours typically involve action or activity systems such as
2 zip lines, platforms, landing areas, and connecting trails.

3 **"§ 95-283. Powers and duties of Commissioner.**

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

- 5 (1) To delegate to the Chief of the Elevator and Amusement Device Bureau such
6 powers, duties, and responsibilities as the Commissioner determines will best
7 serve the public interest in the safe operation of zip lines, aerial adventure
8 parks, canopy tours, challenge courses, or other similar devices.
- 9 (2) To supervise the Chief of the Elevator and Amusement Device Bureau.
- 10 (3) To adopt, modify, or revoke such rules as are necessary for the purpose of
11 carrying out the provisions of this Article including those governing the design,
12 construction, installation, plans review, testing, inspection, certification,
13 operation, use, maintenance, alteration, and relocation of devices subject to the
14 provisions of this Article. The rules promulgated pursuant to this rule-making
15 authority shall conform to good engineering and safety standards, formulas, and
16 practices.
- 17 (4) To enforce rules adopted under authority of this Article.
- 18 (5) To require inspection and testing for all new, modified, and relocated devices
19 subject to the provisions of this Article. Devices shall be inspected at least once
20 annually.
- 21 (6) To require maintenance and periodic inspections and tests of all devices subject
22 to the provisions of this Article.
- 23 (7) To issue certificates of operation which certify for use such devices as are
24 found to be in compliance with this Article and the rules promulgated
25 thereunder.
- 26 (8) To have reasonable access, with or without notice, to the devices subject to the
27 provisions of this Article during reasonable hours for purposes of inspection or
28 testing.
- 29 (9) To obtain an Administrative Search and Inspection Warrant in accordance with
30 the provisions of Article 4A of Chapter 15 of the General Statutes.
- 31 (10) To investigate accidents involving devices subject to the provisions of this
32 Article to determine the cause of the accident. The Commissioner shall have
33 full subpoena powers in conducting the investigation.
- 34 (11) To institute proceedings in the civil courts of this State when a provision of this
35 Article or the rules promulgated thereunder has been violated.
- 36 (12) To adopt, modify, or revoke rules governing the qualifications of inspectors.
- 37 (13) To grant exceptions from the requirements of the rules promulgated under
38 authority of this Article and to permit the use of other devices when these
39 exceptions and uses will not expose the public to an unsafe condition likely to
40 result in serious personal injury or property damage.
- 41 (14) To require that before any device subject to the provisions of this Article is
42 erected in this State, or before any additions or alterations which substantially
43 change the device are made, or before the physical spacing between the devices
44 is changed, the owner or the owner's authorized agent shall have the plans,
45 diagrams, specifications, or stress analyses of the device approved by a
46 professional engineer licensed in North Carolina.
- 47 (15) To prohibit the use of any device subject to the provisions of this Article which
48 is found upon inspection to expose the public to an unsafe condition likely to
49 cause personal injury or property damage. Such a device shall be made
50 operational only upon the Commissioner's determination that it has been made
51 safe.

- 1 (16) To order the payment of all civil penalties provided by this Article. The clear
2 proceeds of funds collected pursuant to a civil penalty order shall be remitted to
3 the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.
4 (17) To coordinate enforcement and inspection activity relative to equipment,
5 devices, and operations covered by this Article in order to minimize duplication
6 of liability or regulatory responsibility on the part of the employer or owner.
7 (18) To charge annual fees not to exceed one hundred dollars (\$100.00) per site for
8 the issuance of certificates of operation for devices subject to this Article.
9 (19) To charge annual fees not to exceed one thousand dollars (\$1,000) per device
10 for the inspection by the Bureau of devices subject to this Article.
11 (20) To charge annual fees not to exceed fifty dollars (\$50.00) for a qualified
12 inspector certification. This fee shall not apply to a person employed by the
13 Bureau.

14 **"§ 95-284. Adoption of standards.**

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

- 19 (1) The Association for Challenge Course Technology (ACCT) ANSI/ACCT
20 03-2016 Challenge Course and Canopy/Zip Line Tour Standard.
21 (2) The Professional Ropes Course Association (PRCA) ANSI/PRCA 1.0-.3-2014
22 Ropes Challenge Course Installation, Operation & Training Standard.
23 (3) The European Ropes Course Association (ERCA) European Ropes Course
24 Standard. (EN 15567-2:2014).
25 (4) The American Society for Testing and Materials (ASTM) F2959-14 Standard
26 Practice for Special Requirements for Aerial Adventure Courses.

27 **"§ 95-285. Certificate of operation requirements.**

28 (a) An owner of a device subject to the provisions of this Article shall annually submit an
29 application for a certificate of operation to the Commissioner and shall request a certificate of
30 operation for each device at least 30 days before the first intended date of use each year.

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

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

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

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

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

- 45 (1) The name, address, telephone number, e-mail address (if applicable), and Web
46 site address (if applicable) of the device owner.
47 (2) Registration of the device, including its location, dates of operation, date of
48 installation, and the name and address of the installer of the equipment.
49 (3) Documentation of a commercial general liability insurance policy covering
50 claims for personal injury, death, and property damages arising from the

- 1 operation of a device subject to the provisions of this Article in amounts not
2 less than those specified in G.S. 95-291.
3 (4) If the device incorporates live trees, the tree or trees shall be inspected and
4 approved by an International Society of Arboriculture-certified arborist or other
5 professional with equivalent expertise to ensure good health and stability of the
6 trees. All trees shall receive this assessment no less than annually.
7 (5) An inspection report completed no more than 60 days prior to submission of the
8 application prepared by a third-party, qualified inspector pursuant to
9 G.S. 95-286(a). The inspection report must include proof of abatement of all
10 deficiencies found in the inspection.
11 (6) Signed certification of compliance with the record-keeping requirements of
12 G.S. 95-288.
13 (7) Signed certification of compliance with applicable federal, state, and local
14 safety, fire, health, or building codes or standards.
15 (g) An owner of the device shall include the certificate of operation fee with the certificate
16 of application.

17 (h) A certificate of operation for a device expires annually on December 31.

18 **"§ 95-286. Annual inspection; issuance of certificate of operation.**

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

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

24 **"§ 95-287. Qualifications and certification of qualified inspectors.**

25 (a) A person applying for certification as a qualified inspector shall make application
26 annually on a form provided by the Commissioner.

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

28 (1) Current Professional Inspector Certification from the ACCT or a substantially
29 equivalent certification as defined in the challenge course standards; or
30 experience and training that the Commissioner has determined in advance are
31 substantially equivalent to the requirements set forth in the challenge course
32 standards.

33 (2) The applicant must report to the Commissioner any lapse in professional
34 inspector certification. Lapse in professional inspector certification will result
35 in immediate suspension of the individual's qualified inspector certification
36 until such time that the individual provides renewal documentation.

37 (c) An applicant for certification as a qualified inspector shall include the certification fee
38 with the certification application.

39 **"95-288. Pre-opening inspection and test; training; emergency evacuation plan; records;**
40 **revocation of certificate of operation.**

41 (a) An owner of a device subject to the provisions of this Article, or the owner's authorized
42 agent, is hereby required to make a preopening inspection and test of such device, prior to
43 admitting the public, each day such device is intended to be used and in accordance with challenge
44 course standards.

45 (b) An owner of a device subject to the provisions of this Article, or the owner's authorized
46 agent, is hereby required to train employees on the operation of the device in accordance with Part
47 1.3 of the ANSI/PRCA 2014 Ropes Challenge Course Installation, Operation & Training Standard
48 or a substantially similar standard.

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

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

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

9 **"§ 95-289. Noncomplying devices; appeal.**

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

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

18 (c) Any action taken under this section by the Commissioner shall be final unless within
19 15 days after receipt of notice thereof by certified mail with return receipt, by signature
20 confirmation as provided by the U.S. Postal Service, by a designated delivery service authorized
21 pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand delivery the person against
22 whom such action was taken takes exception to the determination, in which event the final
23 determination of the action shall be made in an administrative proceeding and in a judicial
24 proceeding pursuant to Chapter 150B of the General Statutes.

25 **"§ 95-290. Operation without certificate; operation not in accordance with Article or rules**
26 **and regulations; operation after refusal to issue or after revocation of certificate.**

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

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

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

35 **"§ 95-291. Operation of unsafe device.**

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

39 **"§ 95-292. Reports required.**

40 (a) If a participant or member of the general public is involved in an accident related to the
41 operation of a device subject to the provisions of this Article that results in a serious injury or a
42 fatality, the owner or operator shall immediately shut down the operation of the device and secure
43 the safety of other participants and the general public.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

48 **"§ 95-293. Operators.**

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

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

5 **"§ 95-294. Liability insurance.**

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

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

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

19 **(d) The Commissioner shall not accept any commercial general liability insurance policy**
20 **unless it obligates the insurer to give written notice to the Commissioner at least 30 days before**
21 **any proposed cancellation, suspension, or nonrenewal of the policy.**

22 **"§ 95-295. Violations; civil penalties; appeal; criminal penalties.**

23 **(a) Any person who violates G.S. 95-290(a) or (b) is subject to a civil penalty not to**
24 **exceed one thousand two hundred fifty dollars (\$1,250) for each rule, regulation, or section of this**
25 **Article violated and for each day each device is so operated or used.**

26 **(b) Any person who violates G.S. 95-290(c), 95-292, 95-293(a), or 95-294 is subject to a**
27 **civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each day each device is**
28 **so operated or used.**

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

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

36 **(e) The determination of the amount of the penalty by the Commissioner is final unless**
37 **within 15 days after receipt of notice thereof by certified mail with return receipt, by signature**
38 **confirmation as provided by the U.S. Postal Service, by a designated delivery service authorized**
39 **pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand delivery the person charged**
40 **with the violation takes exception to the determination, in which event final determination of the**
41 **penalty shall be made in an administrative proceeding and in a judicial proceeding pursuant to**
42 **Chapter 150B of the General Statutes.**

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

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

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

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

12 **"§ 95-296. Denial of permission to enter device subject to the provisions of this Article.**

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

16 **"§ 95-297. Legal representation.**

17 It shall be the duty of the Attorney General of North Carolina, when requested, to represent the
18 Department of Labor in actions or proceedings in connection with this Article or the rules and
19 regulations promulgated thereunder.

20 **"§ 95-298. Authorization for similar safety and health federal-State programs.**

21 Consistent with the requirements and conditions provided in this Article and the rules
22 promulgated thereunder, the State, upon recommendation of the Commissioner of Labor, may
23 enter into agreements or arrangements with appropriate federal agencies for the purpose of
24 administering the enforcement of federal statutes, rules, and regulations governing devices subject
25 to the provisions of this Article.

26 **"§ 95-299. Confidentiality of trade secrets.**

27 All information reported to or otherwise obtained by the Commissioner or the Commissioner's
28 agents or representatives in connection with any inspection or proceeding under this Article or the
29 rules and regulations promulgated thereunder which contains or might reveal a trade secret shall
30 be considered confidential, except as to carrying out this Article and the rules promulgated
31 thereunder or when it is relevant in any proceeding under the same. In any proceeding the
32 Commissioner or the Court shall issue orders as may be appropriate to protect the confidentiality
33 of trade secrets.

34 **"§ 95-300. Construction of Article and rules and regulations and severability.**

35 This Article and the rules promulgated thereunder shall receive a liberal construction to the
36 end that the welfare of the people may be protected. If any provisions of either or the application
37 thereof to any person or circumstances is held to be invalid, such invalidity shall not affect those
38 provisions or applications which can be given effect without the invalid provision or application,
39 and to that end the provisions of this Article are severable.

40 **"§ 95-301 through 95-310: Reserved for future codification purposes."**

41 **SECTION 2.** This act becomes effective December 1, 2017.