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Short Title: Labor/Up Amusement Device Penalties.

(Public)

Sponsors:

Referred to:

February 4, 2015

1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE THE PENALTIES FOR THE ILLEGAL OPERATION OF
3 AMUSEMENT DEVICES AND TO DIRECT THE DEPARTMENT OF LABOR TO
4 STUDY THE REGULATION OF THE OPERATION OF ZIP-LINES.

5 The General Assembly of North Carolina enacts:

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

7 "§ 95-111.3. Definitions.

8 ...

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

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

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

15 ...

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

19"

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

21 "§ 95-111.13. Violations; civil penalties; appeal; criminal penalties.

22 (a) Any person who violates G.S. 95-111.7(a) or (b) (Operation without certificate;
23 operation not in accordance with Article or rules and regulations) ~~shall be or~~ G.S. 95-111.8
24 (Location notice) is subject to a civil penalty not to exceed ~~two hundred fifty dollars (\$250.00)~~
25 one thousand two hundred fifty dollars (\$1,250) for each rule, regulation, or section of this
26 Article violated and for each day each device is so operated or used.

27 (b) Any person who violates G.S. 95-111.7(c) (Operation after refusal to issue or after
28 revocation of certificate) or G.S. 95-111.10(c) (Reports required) or G.S. 95-111.12 (Liability
29 insurance) ~~shall be is~~ subject to a civil penalty not to exceed ~~five hundred dollars (\$500.00)~~ two
30 thousand five hundred dollars (\$2,500) for each day each device is so operated or used.

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

34 (d) Any person who violates the provisions of G.S. 95-111.10(d) (Reports required) or
35 knowingly permits the operation of an amusement device in violation of G.S. 95-111.11(a)



1 (Operator requirements) ~~shall be is~~ subject to a civil penalty not to exceed ~~five hundred dollars~~
2 ~~(\$500.00) two thousand five hundred dollars (\$2,500) for each day each device is so operated~~
3 ~~or used.~~

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

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

12 (g) The determination of the amount of the penalty by the Commissioner ~~shall be is~~
13 final, unless within 15 days after receipt of notice thereof by certified mail with return receipt,
14 by signature confirmation as provided by the U.S. Postal Service, by a designated delivery
15 service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand
16 delivery, the person charged with the violation takes exception to the determination, in which
17 event final determination of the penalty shall be made in an administrative proceeding and in a
18 judicial proceeding pursuant to Chapter 150B of the General Statutes, the Administrative
19 Procedure Act.

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

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

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

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

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

44 "(a) No owner shall operate a device subject to the provisions of this Article, unless at
45 the time, there is in existence a contract of insurance providing coverage of not less than one
46 million dollars (\$1,000,000) per occurrence against liability for injury to persons or property
47 arising out of the operation or use of such device or there is in existence a contract of insurance
48 providing coverage of not less than five hundred thousand dollars (\$500,000) per occurrence
49 against liability for injury to persons or property arising out of the operation or use of the
50 amusement ~~devices device~~ if the annual gross volume of the ~~devices device~~ does not exceed
51 two hundred seventy-five thousand dollars (\$275,000); provided waterslides shall not be

1 required to be insured as herein provided for an amount in excess of one hundred thousand
2 dollars (\$100,000) per occurrence. The insurance contract to be provided must be by any
3 insurer or surety that is acceptable to the North Carolina Insurance Commissioner and
4 authorized to transact business in this State; provided, however, that insurance for waterslides
5 may be purchased under Article 21 of Chapter 58 of the General Statutes or under
6 G.S. 58-28-5(b)."

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

- 11 (1) The number of zip-line operations in the State, excluding zip-lines operated
12 on private residence property.
- 13 (2) Whether any counties or cities in the State regulate zip-lines by ordinance
14 and the content of any such ordinances.
- 15 (3) The reasons for the specific statutory exclusion of zip-lines from the
16 definition of "amusement device" that was enacted in S.L. 2011-36 and
17 whether this exclusion should be repealed.
- 18 (4) The consequences and risks to the public of failure to regulate zip-line
19 operations.
- 20 (5) The types of liability insurance coverage recommended for zip-line
21 operations and the costs and availability of such coverage.
- 22 (6) The number and nature of reported accidents and injuries involving zip-lines
23 in the State over the last five years.
- 24 (7) Protections available under existing law to zip-line amusement operators and
25 participants.
- 26 (8) Costs associated with safety inspections of zip-line equipment, gear, and
27 operations.
- 28 (9) A summary and analysis of other states' laws, ordinances, and regulations for
29 zip-lines and for amusement rides that include zip-lines.
- 30 (10) Any federal standards that may apply to zip-lines.
- 31 (11) Any training requirements, certifications, and standards recommended for
32 zip-line operators and employees.
- 33 (12) Strategies for addressing the safe operations of zip-lines.
- 34 (13) Possible regulatory bodies for zip-line operations.
- 35 (14) Any other issues the Department deems relevant.

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

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

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

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