

Article 15.

Passenger Tramway Safety.

**§ 95-116. Declaration of policy.**

In order to safeguard life, health, property, and the welfare of this State, it shall be the policy of the State of North Carolina to protect its citizens and visitors from unnecessary mechanical hazards in the operation of ski tows, lifts, tramways and related devices to insure that reasonable design and construction are used, that accepted safety devices and sufficient personnel are provided for, and that periodic inspections and adjustments are made which are deemed essential to the safe operation of ski tows, ski lifts and passenger tramways. The primary responsibility for design, construction, maintenance, and inspection rests with the operators of such passenger tramway devices. The State, through the Commissioner of Labor, shall register all ski lift devices and passenger tramways and establish reasonable standards of design and operational practices, and cause to be made such inspections as may be necessary in carrying out this policy. (1969, c. 1021.)

**§ 95-117. Definitions.**

Each word or term defined in this Article has the meaning indicated in this section, unless a different meaning is plainly required by the context.

- (1) Annual gross volume. – The gross receipts a person or passenger tramway receives from all types of sales made and business done during a 12-month period.
- (2) Commissioner. – The Commissioner of Labor of the State of North Carolina.
- (3) Industry. – Activities of all those persons in the State who own, manage, or direct the operation of passenger tramways.
- (4) Operator. – Any person, firm, corporation, or organization which owns, manages, or directs the operation of a passenger tramway. "Operator" may apply to the State or any political subdivision or instrumentality thereof.
- (5) Owner. – Any person or authorized agent of such person who owns a passenger tramway or, in the event the passenger tramway is leased, the lessee. The term owner shall also include the State of North Carolina or any political subdivision thereof or any unit of local government.
- (6) Passenger tramway. – A device used to transport passengers uphill on skis, or in cars on tracks, or suspended in the air by the use of steel cables, chains or belts, or by ropes, and usually supported by trestles or towers with one or more spans. The term includes any of the following devices:
  - a. Chairlift. – A type of transportation on which passengers are carried on chairs suspended in the air and attached to a moving cable, chain or link belt supported by trestles or towers with one or more spans, or similar devices.
  - a1. Conveyor. – A type of transportation on which passengers are transported uphill on a flexible moving element (conveyor belt) that travels uphill on one path and generally returns underneath the uphill portion.
  - a2. Funicular. – A system in which passengers are transported in or on carriers that are supported and guided by a level or inclined guideway

- and propelled by means of a haul rope or other flexible element that is driven by a power unit remaining essentially at a single location.
- a3. Gondola. – An enclosed cabin attached to a cable that mechanically transports people or cargo.
  - b. J bar, T bar, or platter pull. – Devices which pull skiers riding on skis by means of an attachment to a main overhead cable supported by trestles or towers with one or more spans.
  - c. Multicar aerial passenger tramway. – A device used to transport passengers in several open or in closed cars attached to, and suspended from, a moving wire rope or attached to a moving wire rope and supported on a standing wire rope, or similar device.
  - d. Rope tow. – A type of transportation which pulls the skiers, riding on skis as the skier grasps the rope manually, or similar device.
  - e. Skimobile. – A device in which a passenger car running on steel or wooden tracks is attached to and pulled by a steel cable, or similar device.
  - f. Two-car aerial passenger tramway. – A device used to transport passengers in two open or enclosed cars attached to, and suspended from, a moving wire rope or attached to a moving wire rope and supported on a standing wire rope or similar device.
- (7) Person. – 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. (1969, c. 1021; 2005-347, s. 1; 2017-211, s. 14(b).)

**§ 95-118. Registration required; application procedures.**

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

(b) Operators of devices subject to the provisions of this Article shall apply to the Commissioner of Labor, on forms provided by the Commissioner, for registration of the devices that the operator owns or manages, or the operation of which the operator directs. The application shall contain information that the Commissioner may reasonably require in order for the Commissioner to determine whether the passenger tramway sought to be registered by the operator complies with the intent of this Article and the rules adopted by the Commissioner. (1969, c. 1021; 2005-347, s. 2.)

**§ 95-119. Certification criteria; procedures; display of certificate.**

(a) A registration certificate shall be issued annually when the Commissioner is satisfied that the facts stated in the application are sufficient to enable the Commissioner to fulfill his or her duties under this Article and that the device sought to be registered complies with the rules adopted pursuant to this Article.

(b) The Commissioner may conduct any inspections necessary to determine whether the device sought to be registered complies with the intent of this Article and the rules adopted pursuant to this Article.

(c) The registration certificate for each device subject to the provisions of this Article shall be displayed prominently at the place where passengers are loaded onto the device. (1969, c. 1021; 2005-347, s. 3; 2011-366, s. 7.)

**§ 95-120. Powers and duties of the Commissioner.**

In addition to all other powers and duties conferred and imposed upon the Commissioner by this Article, the Commissioner shall have and exercise the following powers and duties:

- (1) To adopt, modify, or revoke the rules necessary for carrying out the provisions of this Article, including those governing the design, construction, installation, operation, use, and maintenance of devices subject to the provisions of this Article. The rules adopted under this section shall conform as nearly as possible to the standards contained in the B77.1 – American National Standards Safety Requirements for Aerial Passenger Tramways and with good engineering and safety standards, formulas, and practices.
  - (1a) To enforce the rules adopted under this Article.
  - (1b) To grant exceptions from the requirements of the rules adopted under this Article and to permit the use of other devices when the exceptions and uses will not expose the public to an unsafe condition likely to result in serious personal injury or damage to property.
- (2) To hold hearings and take evidence in all matters relating to the exercise and performance of the powers and duties vested in the Commissioner, subpoena witnesses, administer oaths, and compel the testimony of witnesses and the production of books, papers and records relevant to any inquiry.
- (3) To approve, deny, revoke, and renew the registration certificates in accordance with the rules adopted pursuant to this Article.
- (4) To institute civil actions for injunctive or other relief against violators of this Article.
- (5) To cause the seal of the Commissioner of Labor to be affixed to all registrations issued by the Commissioner, and to employ, within the funds available to the Commissioner, and prescribe the duties of the personnel as the Commissioner may deem necessary in the administration of this Article.
- (6) To have reasonable access, with or without notice, to the devices subject to the provisions of this Article during reasonable hours, for the purposes of inspections and testing.
- (7) To investigate accidents involving devices subject to the provisions of this Article to determine the cause of the accident. The Commissioner shall have full subpoena powers in conducting the investigations.
- (8) 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 operator, owner, or employer.
- (9) To establish fees not to exceed one hundred thirty-seven dollars (\$137.00) for the inspection and issuance of registration certificates for devices that are in use and subject to this Article. (1969, c. 1021; 2005-347, s. 4.)

**§ 95-120.1. Liability insurance.**

(a) No person shall operate a device subject to the provisions of this Article, unless at the time of operation, there is in existence:

- (1) 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 the device; or
- (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).

The insurance contract to be provided must be made by an insurer or surety that is acceptable to the North Carolina Insurance Commissioner and authorized to transact business in this State.

(b) The Commissioner shall not issue a certificate of registration until the operator or the operator's authorized agent provides proof of the required contract of insurance.

(c) The Commissioner may request from the operator of a device subject to the provisions of this Article or the operator's authorized agent, proof of the required contract of insurance, and upon failure of the operator or authorized agent to provide proof of insurance, the Commissioner shall have the power to prevent the commencement of or to stop the operation of the device until such time as proof is provided. (2005-347, s. 5; 2015-152, s. 5.)

#### **§ 95-121. Inspections and reports.**

The Commissioner may cause to be made such inspections of the construction, operation, and maintenance of passenger tramways as he shall deem to be reasonably necessary. If, as the result of an inspection, it is found that a violation of the Commissioner's rules and regulations exists, or a condition in passenger tramway construction, operation or maintenance exists, which endangers safety of the public, an immediate report shall be made to the Commissioner for appropriate investigation and order. (1969, c. 1021.)

#### **§ 95-122. Emergency shutdown.**

When facts are presented to the Commissioner tending to show that an unreasonable hazard exists in the continued operation of a passenger tramway, and after such verification of said facts as is practical under the circumstances and consistent with the public safety, the Commissioner may by an emergency order require the operator of said tramway forthwith to cease using the same for the transportation of passengers. Such emergency order shall be in writing, signed by the Commissioner, and notice thereof shall be served upon the operator or his agent immediately in control of said passenger tramway by a true copy of such order, with a return being made of such service and endorsed on the original order. Such emergency shutdown shall be effective for a period not to exceed 48 hours from the time of service. Immediately after the issuance of an emergency order, the Commissioner shall conduct an investigation into the facts of the case and shall take such action as may be appropriate and as provided by the provisions of this Article. (1969, c. 1021.)

#### **§ 95-123. Orders.**

If, after investigation, the Commissioner finds that a violation of any of his rules and regulations exists, or that there is a condition in passenger tramway construction, operation, or maintenance which endangers the safety of the public, the Commissioner shall forthwith issue his written order setting forth his findings, the corrective action to be taken, and fixing a reasonable

time for compliance therewith. The order shall be sent to the affected operator 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, and shall become final unless the operator contests the order by filing a petition for a contested case under G.S. 150B-23 within 20 days after receiving the order. The Commissioner shall have the power to institute injunctive proceedings in any court of competent jurisdiction of the district court district as defined in G.S. 7A-133 or superior court district or set of districts as defined in G.S. 7A-41.1, as the case may be, in which the passenger tramway is located for the purpose of restraining the operation of said tramway or for compelling compliance with any lawful order of the Commissioner. Judicial review of a final decision under this section may be obtained under Article 4 of Chapter 150B of the General Statutes. (1969, c. 1021; 1973, c. 1331, s. 3; 1987, c. 827, s. 264; 1987 (Reg. Sess., 1988), c. 1037, s. 106; 2003-308, s. 5; 2007-231, s. 9.)

#### **§ 95-124. Suspension of registration.**

If any operator fails to comply with the lawful order of the Commissioner as issued under this Article, and within the time fixed thereby, the Commissioner may suspend the registration of the affected passenger tramway for such time as he may consider necessary for the protection of the safety of the public. Any operator who shall be convicted, or enter a plea of guilty or nolo contendere, to operating a passenger tramway which has not been registered by the Commissioner, or after its registration has been suspended by the Commissioner, shall be guilty of a Class 1 misdemeanor. (1969, c. 1021; 1993, c. 539, s. 670; 1994, Ex. Sess., c. 24, s. 14(c).)

#### **§ 95-125. Effective date of initial applications.**

This Article shall take effect and become operative on July 30, 1969, provided that the initial applications for registration of passenger tramways shall be filed on or before November 1, 1969, and passenger tramways in existence on November 1, 1969, may be operated without registration until final action is taken by the Commissioner on the application for registration thereof. (1969, c. 1021.)

#### **§ 95-125.1. Operation of unsafe device.**

No person shall operate, permit to be operated, or use any device subject to the provisions of this Article if the person knows or reasonably should know that the operation or use of the device will expose the public to an unsafe condition which is likely to result in personal injury or property damage. (2017-211, s. 14(c).)

#### **§ 95-125.2. Reports required.**

(a) The owner of any device regulated under the provisions of this Article, or the owner's authorized agent, shall, within 24 hours, notify the Commissioner of each and every occurrence involving the device when either of the following occurs:

- (1) Death or injury requiring medical treatment, other than first aid, by a physician. For the purposes of this section, "first aid" means (i) the one-time treatment or observation of scratches, cuts not requiring stitches, burns, splinters, or contusions or (ii) performing 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.

(2) Damage to the device indicating a substantial defect in design, mechanics, structure, or equipment that affects 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) of this section 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, after an occurrence specified in subsection (a) of this section, shall do either of the following:

(1) 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.

(2) 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. (2017-211, s. 14(c).)

**§ 95-125.3. Violations; civil penalties; appeal; criminal penalties.**

(a) Any person who violates G.S. 95-118 (Registration required; application procedures) is subject to a civil penalty not to exceed one thousand two hundred fifty dollars (\$1,250) for each day each device is so operated or used.

(b) Any person who violates G.S. 95-120.1 (Liability insurance) or G.S. 95-125.2 (Reports required) is subject to a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each day each device is so operated and used.

(c) Any person who violates G.S. 95-125.1 (Operation of unsafe device) is subject to a civil penalty not to exceed five thousand dollars (\$5,000) for each day each device is so operated and used.

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

(e) The Commissioner's determination of the amount of the penalty 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 pursuant to Chapter 150B of the General Statutes, the Administrative Procedures 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 violation occurred, a certified copy of a final order of the Commissioner unappealed form, or of a final order of the Commissioner affirmed upon appeal. Upon such filing, the clerk of said court shall enter judgment in accordance with the final order and notify the parties. The judgment shall have the same effect, and all proceedings in relation to the

judgment shall thereafter be the same, as though the judgment had been rendered in a suit duly heard and determined by the superior court of the General Court of Justice.

(g) 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.

(h) 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. (2017-211, s. 14(c).)