



# HOUSE BILL 1043: Zip Line and Chall.Course Safety/Sanders' Law.

**This Bill Analysis  
reflects the  
contents of the bill  
as it was presented  
in committee.**

2016-2017 General Assembly

<b>Committee:</b>	House Judiciary III. If favorable, re-refer to Finance	<b>Date:</b>	June 15, 2016
<b>Introduced by:</b>	Reps. Davis, Howard	<b>Prepared by:</b>	Janice Paul Committee Counsel
<b>Analysis of:</b>	PCS to First Edition H1043-CSTJ-73		

**SUMMARY:** *The Proposed Committee Substitute (PCS) to House Bill 1043 would regulate zip lines and challenge courses.*

**CURRENT LAW:** Zip lines are among the listed exclusions to the definition of the term "amusement device" in the Amusement Device Safety Act (Article 14B of Chapter 95), and thus are not currently regulated under North Carolina law.

**BILL ANALYSIS:** The PCS would create a new Article 24 within Chapter 95, entitled "Zip Line and Challenge Course Safety." The new article would largely track the regulations in the Amusement Device Safety Act.

**SECTION 1** of the PCS would provide that the act shall be known as "Sanders' Law."

**SECTION 2**

- **G.S. 95-280 – G.S. 95-282** set forth the legislative purpose, scope, and definitions that apply in the new Article.
- **G.S. 95-283** would grant the Commissioner of Labor specified powers, including the authority to:
  - Delegate to the Chief of the Elevator and Amusement Device Bureau the powers, duties, and responsibilities necessary to serve the public interest in the safe operation of zip lines, aerial adventure parks, canopy tours, challenge courses, or other similar devices.
  - Adopt, modify, revoke, and enforce rules governing the design, construction, installation, plans review, testing, inspection, certification, operation, use, maintenance, alteration, and relocation of devices subject to regulation under the act as well as the qualifications of inspectors, and to grant exceptions from the rules if the exception does not expose the public to an unsafe condition likely to result in serious personal injury or property damage.
  - Require maintenance, inspection, and testing of all new, modified and relocated devices at least once annually.
  - Issue certificates of operation.
  - Have reasonable access, with or without notice, to devices for purposes of inspection or testing, and to obtain necessary Search and Inspection Warrants.
  - Investigate accidents involving devices subject to the Article.
  - Bring civil court proceedings in State courts when the law or rules have been violated.
  - Require a licensed professional engineer to approve a substantial alteration of a device.
  - Prohibit use of any device that exposes the public to an unsafe condition.
  - Order payment of civil penalties specified, to go to the Civil Penalty and Forfeiture Fund.

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Director



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- Coordinate enforcement and inspection activity to minimize duplication of liability or regulatory responsibility on the part of the employer or owner
  - Charge reasonable fees for the issuance of certificates of operation, for device inspections by Bureau personnel, and to process biennial applications for qualified inspector designation.
- **G.S. 95-284, Adoption of standards,** would require devices subject to the Article to conform to specified standards.
- **G.S. 95-285, Certificate of operation requirements,** would require a certificate of operation for each device annually. The application for the certificate of operation would have to contain specified information, including:
- Certification from a State-licensed professional engineer relating to the design, installation, and any additions or alterations.
  - Certain owner and installer information.
  - Documentation of liability insurance covering claims for personal injury, death, and property damages arising from the operation of a device.
  - Certification of a certified arborist or other professional with equivalent expertise to ensure the health and stability of any live trees the device incorporates.
  - An inspection report of a third party, qualified inspector within the time specified.
  - Signed certification of compliance with the record keeping requirements of State law and with applicable federal, State, and local safety, fire, health, or building codes or standards.
- **G.S. 95-286, Annual inspection; issuance of certificate of operation,** would require an inspection of a device before certificate of operation is issued, and require the posting of the certificate of operation in a location where it is readily visible to participants.
- **G.S. 95-287, Qualified inspector designation; qualifications and certification of qualified inspectors,** would establish the requirements to obtain a qualified inspector designation, and require a biennial application for certification.
- **G.S. 95-288, Pre-opening inspection and test; training; emergency evacuation plan; records; revocation of certificate of operation,** would set forth ongoing requirements as indicated, with failure to comply resulting in the Commissioner's refusing to issue or renew, or revoking, suspending, or amending the certificate of operation.
- **G.S. 95-289, Noncomplying devices; appeal.** This section would give the Commissioner the authority to order that a device not be used upon a determination that the device exposes the public to an unsafe condition, and sets forth the appeal rights of the owner under G.S. Chapter 150B, the Administrative Procedures Act.
- **G.S. 95-290, Operation without certificate; operation not in accordance with Article or rules and regulations; operation after refusal to issue or after revocation of certificate,** would make it unlawful to operate or use any device without a valid certificate of operation, or in any way that violates the applicable rules and regulations. Violation would subject the violator to the following:
- A civil penalty of up to \$1,250 per violation, per day for each day each device is so operated or used.

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- For operation or use of a device after a certificate of operation has been refused or revoked, a civil penalty of up to \$2,500 for each day each device is so operated or used.
- For operating or allowing the operation or use of any device that the person knows or reasonably should know will expose the public to an unsafe condition likely to result in personal injury or property damage, a possible civil penalty of up to \$5,000 for each day each device is so operated or used.
- **G.S. 95-291, Operation of an unsafe device,** would prohibit a person from certain conduct, knowing or having reason to know the operation or use of a device would be likely to result in personal injury or property damage.
- **G.S. 95-292, Reports required,** would establish specific reporting requirements and procedures in the event a participant or member of the general public is seriously injured or killed in an accident related to a device, including:
  - Immediately shutting down operation of the device.
  - Ensuring that the scene is left intact.
  - Requiring the owner, operator, and any employees who witnessed the accident or operated the device when the accident occurred to be available to give interviews or statements.
  - Requiring the owner to notify the Commissioner within 24 hours of every occurrence of a death or injury requiring medical treatment by a physician, other than first aid, and of each occurrence resulting in damage to the device that indicates a substantial defect in design, mechanics, structure, or equipment.
  - Requiring certain documentation of the accident and specified retention of certain accident reports and associated evidence for the time prescribed.
  - Requiring the Commissioner to thoroughly investigate the incident.
  - Prohibiting the further operation or moving of a device after a death or serious injury, as described.
- **G.S. 95-293, Operators,** would require device operators to be at least 18 years old, in attendance at all times the device is in operation, and not under the influence of alcohol or any other impairing substance.
- **G.S. 95-294, Liability insurance,** would require device owners to have coverage of at least \$1,000,000 per occurrence against liability for injury to persons or property arising out of the operation of a device.
- **G.S. 95-295, Violations; civil penalties, appeal; criminal penalties,** would give the Commissioner discretion to impose civil penalties as specified, depending on which part of the Article was violated. The person against whom the action was taken would have the right to file a petition for a contested case under G.S. Chapter 150B. In addition to civil penalty, willful violation of the Article would be punished as a Class 2 misdemeanor, including a fine of up to \$10,000 for a first conviction and as a Class 1 misdemeanor including a fine of up to \$20,000 for each additional conviction. If the violation causes the serious injury or death of any person, the violator would be subject to punishment as a Class E felon.
- **G.S. 95-296** would allow the owner or operator of a device to deny entrance to any device if they believe such entry may jeopardize the safety of the person desiring entry, riders, or other person.

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- **G.S. 95-297, Legal representation**, would require the Attorney General, upon request, to represent the Department of Labor in actions or proceedings under this Article.
- **G.S. 95-298 and G.S. 95-299** would authorize the Commissioner to enter into certain health and safety programs with other agencies, provide for confidentiality of trade secrets.
- **G.S. 95-300** contains a severability clause.

**SECTION 3** would authorize the Department to adopt rules, including temporary rules, design and distribute forms, accept applications, and establish and collect fees so that a device subject to the act that is existing on or before December 1, 2017, is in compliance with the act and has been issued a certificate of operation by that date.

**EFFECTIVE DATE:** Section 2 of this act becomes effective December 1, 2017. G.S. 95-295(g) and (h), as enacted by Section 2 of this act, apply to violations occurring on or after December 1, 2017. The remainder of this act is effective when it becomes law.

*Gus Willis, counsel to House Judiciary Committee III, substantially contributed to this summary.*