



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

# HOUSE BILL 380: Aerial Adventure Courses/Sanders' Law.

2019-2020 General Assembly

<b>Committee:</b>		<b>Date:</b>	May 6, 2019
<b>Introduced by:</b>	Reps. Davis, Howard, Setzer, Lucas	<b>Prepared by:</b>	Tawanda N. Foster Staff Attorney
<b>Analysis of:</b>	Third Edition		

**OVERVIEW:** House Bill 380, an act to be entitled Sanders Law, regulates aerial adventure courses.

**CURRENT LAW:** Article 47 of Chapter 66 of the General Statutes provides financial responsibility requirements (requiring liability insurance) for zip line and challenge courses.

**BILL ANALYSIS:** House Bill 380 does the following:

**Section 1** requires this act will be known as "Sanders Law."

**Section 2** creates a new Article 14C in Chapter 95 of the General Statutes and does the following:

Short title; Scope; and Definitions

- Names the new article the "Aerial Adventure Course Safety Act of North Carolina."
- Governs the design, construction, installation, plans review, testing, inspection, certification, operation, use, maintenance, alteration, and relocation of aerial adventure courses in this State.
- Exempts aerial adventure courses installed at a private residence not open to the public or where no fee is charged; and aerial adventure courses operated by a government entity solely for law enforcement, fire and rescue, or military training purposes from this Article.
- Provides definitions of relevant terms.

Powers and Duties of Commissioner of Labor

- Empowers the Commissioner of Labor to do any of the following:
  - Delegate the powers, duties, and responsibilities of this Article to the Chief of the Elevator and Amusement Device Bureau.
  - Adopt, modify, or revoke rules necessary to carry out the provisions of this Article.
  - To enforce rules adopted under this Article.
  - To require inspection and testing for all new, modified, and relocated regulated devices at least once annually.
  - To require maintenance and periodic inspections and tests of all regulated devices.
  - To issue permits to operate which certify that the regulated devices are in compliance with this Article.

Karen Cochrane-Brown  
Director



Legislative Analysis  
Division  
919-733-2578

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- To institute proceedings in the civil courts of this State when the rules of this Article are violated.
- To order the payment of civil penalties provided in this Article.
- To charge reasonable fees to issue permits to operate regulated devices.

## Adoption of Standards

- Provides the design, manufacture, installation, operation, and maintenance of all regulated devices must conform to one of the following standards.
  - Association for Challenge Course Technology (ACCT) ANSI/ACCT 03 2016 Challenge Course and Canopy/Zip Line Tour Standard.
  - Professional Ropes Course Association (PRCA) ANSI/PRCA 1.0 .3 2014 Ropes Challenge Course Installation, Operation & Training Standard.
  - European Ropes Course Association (ERCA) European Ropes Course Standard (EN 15567 2:2014).
  - American Society for Testing and Materials (ASTM) F2959 14 Standard Practice for Special Requirements for Aerial Adventure Courses.

## Registration; Applications; Submission and Processing

- Requires all commercial and noncommercial operators of aerial adventure courses to register with the Commissioner of Labor.
- Requires an application for registration must be submitted at least 30 days prior to the expiration of the current permit and on a form prescribed by the Commissioner of Labor. The Commissioner of Labor may approve the application, register the adventure aerial adventure course, and issue a permit to operate. However, the submission of a registration application does not guarantee the registration of an aerial adventure course.
- The owner or operator must obtain a permit prior to opening any regulated device to the public and must post a copy of the permit to operate in close proximity to the entry to a regulated device where it is readily visible to participants.

## Annual Inspections Required

- Requires annual inspections and completion of all necessary corrective measures of all aerial adventure physical elements in accordance with the applicable challenge course standards. Inspections must be performed as often as circumstance require, but not less than once annually.

## Pre-opening inspection and test; Training; Emergency Evacuation Plan; Records; Permit Revocation

- Requires the owner of regulated device to do the following:
  - Conduct a pre-opening inspection and test of a regulated device prior to admitting participants each day the regulated device is in use.
  - Train employees on the operation of a regulated device.
  - Have an emergency evacuation plan for a regulated device.
  - Maintain the required signed records of the pre-opening inspection and test, training, emergency evacuation plan, and any other relevant information for at least the previous 12 months.

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- The Commissioner of Labor may refuse to issue, or renew, or may revoke, suspend, or amend the permit to operate any regulated device if the owner fails to make the required pre-opening inspection and test, train employees, provide an emergency evacuation plan, or maintain other required records.

## Operator Permit Requirements

- No person may operate or permit to be operated a regulated device: 1) without a valid permit to operate; 2) outside of the rules and regulations of this Article; or 3) after the Commissioner has refused to issue the permit to operate.

## Accidents; Reporting

- An owner of a regulated device must notify the Commissioner of Labor within 24 hours of any of the following incidents:
  - An occurrence resulting in death or injury requiring medical treatment, other than first aid.
  - An occurrence resulting in damage to a regulated device indicating a substantial defect in design, mechanics, structure, or equipment affecting the future safe operation of the device.
- An owner must keep a record of every accident or fatality which shall be readily accessible to the general public to include:
  - The date of every accident or fatality.
  - A description of the type of accident.
  - The number of people injured or killed.
  - A description of the types of injuries.

## Operator Age Requirement; Operator Impairment

- An operator of a regulated device must be at least 18 years of age and must not operate a regulated device while under the influence of alcohol or any other impairing substance.

## Liability Insurance Required

- Liability insurance provided by an acceptable insurer of at least one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in the aggregate against liability for injury to persons or property is required for any person owning or operating a regulated device. Proof of insurance coverage must be provided upon request to the Commissioner of Labor.

## Civil Penalties

- The following civil penalties apply to violations of this Article:
  - A civil penalty not to exceed \$1,250.00 for each violation of a rule or regulation for operating without a permit, operation outside of the rules and regulations, or operation after refusal to issue a permit and for each day the regulated device is operated or used in violation.
  - A civil penalty not to exceed \$2,500.00 for each violation of rules or regulations related to accidents, reporting requirements, operator's age requirement, or liability insurance for each day the regulated device is operated or used in violation.
  - A civil penalty not to exceed \$5,000.00 for each violation of rules or regulations related to operator impairment for each day the regulated device is operated or used in violation.

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- The Commissioner of Labor must consider 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.
- The civil penalty determination is final unless the person against whom such action is taken gives notice of appeal within 15 days and files a petition for a contested case under the Administrative Procedures Act.
- The Commissioner of Labor may file the final order in the office of the clerk of superior court and the clerk shall enter the judgement and notify the parties. Such a judgment has the same effect as judgements rendered in a suit heard and determined by the superior court.

## Criminal Penalties

- A person who willfully violates any provision of this Article is guilty of a Class 2 misdemeanor and may be fined not more than \$10,000.00. After a first willful conviction, the person will be guilty of a Class 1 misdemeanor and may be fined not more than \$20,000.00 for a subsequent willful conviction.
- A person who willfully violates any provision of this Article that causes the serious injury or death of any person is guilty of a Class E felony and will be fined.
- Nothing in this Article prevents any prosecuting officer of the State of North Carolina from proceeding with a criminal prosecution for willful or culpable homicide against a person who violates this Article.

## Legal Representation; Confidentiality of Trade Secrets

- The North Carolina Attorney General's Office when requested will represent the North Carolina Department of Labor in actions in connection with this Article.
- Trade secrets obtained in the information reported to the Commissioner of Labor will be confidential.

**Section 3** provides the Department of Labor may adopt rules, design and distribute forms, begin accepting applications, establish and collect fees for devices subject to the provisions of this Act that are existing on or before December 1, 2019.

**Section 4** repeals Article 47 (Zip Line Challenge Course Financial Responsibility) of Chapter 66 of the General Statutes.

**EFFECTIVE DATE:** Sections 2 and 4 become effective on July 1, 2020. The criminal penalties in Section 2 apply to offenses occurring on or after July 1, 2020. The remainder of the act is effective when it becomes law.

**BACKGROUND:** Bonnie Sanders Burney, a 12 year old resident of Wilmington, was killed while using a zip line at a camp on June 11, 2015. This act is named in her honor.