

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

H.B. 380
Mar 19, 2019
HOUSE PRINCIPAL CLERK

H

D

HOUSE BILL DRH40159-LR-22C

Short Title: Aerial Adventure Courses/Sanders' Law. (Public)

Sponsors: Representatives Davis, Howard, Setzer, and Lucas (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO REGULATE AERIAL ADVENTURE COURSES AND TO PROVIDE THAT
3 THE ACT SHALL BE ENTITLED "SANDERS' LAW."

4 The General Assembly of North Carolina enacts:

5 SECTION 1. This act shall be known as "Sanders' Law."

6 SECTION 2. Chapter 95 of the General Statutes is amended by adding a new Article
7 to read:

8 "Article 14C.

9 "Aerial Adventure Course Safety.

10 "**§ 95-112.1. Short title and legislative purpose.**

11 (a) This Article shall be known as the "Aerial Adventure Course Safety Act of North
12 Carolina."

13 (b) The General Assembly finds that a large number of North Carolinians and visitors to
14 our State enjoy participation in aerial adventure courses and participation is growing rapidly.

15 (c) The General Assembly finds that there are inherent risks in aerial adventure courses
16 which should be understood by each participant and which are essentially impossible to eliminate
17 by the aerial adventure course operator.

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

22 (e) It is the intent of this Article that aerial adventure courses are designed, constructed,
23 assembled or disassembled, maintained, and operated so as to prevent injuries.

24 "**§ 95-112.2. Scope.**

25 (a) This Article governs the design, construction, installation, plans review, testing,
26 inspection, certification, operation, use, maintenance, alteration, and relocation of aerial
27 adventure courses in this State.

28 (b) This Article does not apply to an aerial adventure course that is (i) installed at a private
29 residence that is not open to the public and for which no fee is charged or (ii) operated by a
30 government entity solely for law enforcement, fire and rescue, or military training purposes.

31 "**§ 95-112.3. Definitions.**

32 The following definitions apply in this Article:

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

34 (2) ANSI. – American National Standards Institute.

35 (3) Aerial adventure course. – A facility or facilities patronized by either public,
36 member, or private patrons, including the following: (i) ropes courses, (ii)



* D R H 4 0 1 5 9 - L R - 2 2 C *

1 challenge courses, (iii) adventure courses, (iv) adventure parks, (v) zip lines,
2 (vi) zip line tours, (vii) canopy tours, and (viii) high challenge courses,
3 consisting of one or more elevated walkways, platforms, zip lines, nets, ropes,
4 or other elements that require the use of fall hazard safety equipment; provided
5 that:

6 a. The term includes multiple aerial adventure courses at an operator
7 location, which are registered as one device, and shall be inspected and
8 listed on the permit to operate as one device by the inspector.

9 b. The term does not include low ropes courses and climbing walls.

10 (4) Annual gross volume. – The gross receipts resulting from all types of sales
11 made and business done by operation of a regulated device during a 12-month
12 period.

13 (5) Annual inspection report. – The documentation of the annual aerial adventure
14 course inspection conducted by an inspector.

15 (6) Bureau. – Elevator and Amusement Device Bureau of the North Carolina
16 Department of Labor.

17 (7) Challenge course standards. – Any standard adopted pursuant to
18 G.S. 95-112.5.

19 (8) Chief. – The Chief of the Elevator and Amusement Device Bureau of the
20 North Carolina Department of Labor.

21 (9) Commissioner. – Commissioner of Labor of North Carolina.

22 (10) ERCA. – European Ropes Course Association.

23 (11) Inspector – A third-party qualified person that has received ACCT Inspector
24 Certification Exam (ICE) certification or its equivalent and that is not
25 employed or affiliated with the builder, designer, or owner of the operation.

26 (12) Operator. – Any person, partnership, corporation, or other commercial entity,
27 and their agents, officers, employees, or representatives, who has operational
28 responsibility for any regulated device.

29 (13) Owner. – Any person who owns a regulated device, the authorized agent of
30 that person, or any person who is leasing the regulated device from that
31 person.

32 (14) Participant. – Any person who engages in activities on a regulated device
33 individually or in a group activity supervised by an operator of a regulated
34 device.

35 (15) Person. – Any individual, association, partnership, firm, corporation, private
36 organization, or other entity, however organized. The term "person" also shall
37 include the State of North Carolina or any political subdivision thereof or any
38 unit of local government.

39 (16) PRCA. – Professional Ropes Course Association.

40 (17) Qualified person. – An individual who, by possession of a recognized degree,
41 certificate, or professional standing; or who, by possession of extensive
42 knowledge, training, and/or experience in the subject field; has successfully
43 demonstrated ability in design, analysis, evaluation, installation, inspection,
44 specification, testing, or training in the subject work, project, or product, to
45 the extent established by this standard.

46 (18) Registration. – The filing of a properly completed application with the State
47 of North Carolina and approval of the application by the State of North
48 Carolina.

49 (19) Regulated device. – An aerial adventure course subject to the provisions of
50 this Article as set forth in G.S. 95-112.2.

51 **"§ 95-112.4. Powers and duties of Commissioner.**

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

- 2 (1) To delegate to the Chief of the Elevator and Amusement Device Bureau in the
3 exercise of powers, duties, and responsibilities set forth in the Article.
- 4 (2) To adopt, modify, or revoke such rules as are necessary for the purpose of
5 carrying out the provisions of this Article.
- 6 (3) To enforce rules adopted under authority of this Article.
- 7 (4) To require inspection and testing for all new, modified, and relocated
8 regulated devices. Regulated devices shall be inspected at least once annually.
- 9 (5) To require maintenance and periodic inspections and tests of all regulated
10 devices.
- 11 (6) To issue permits to operate which certify that the regulated devices are found
12 to be in compliance with this Article and the rules adopted thereunder.
- 13 (7) To institute proceedings in the civil courts of this State when a provision of
14 this Article or the rules adopted thereunder has been violated.
- 15 (8) To order the payment of all civil penalties provided by this Article. The clear
16 proceeds of funds collected pursuant to a civil penalty order shall be remitted
17 to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.
- 18 (9) To charge reasonable fees for the issuance of permits to operate regulated
19 devices.

20 **"§ 95-112.5. Adoption of standards.**

21 The following standards and subsequent amendments and editions are adopted and
22 incorporated by reference. The design, manufacture, installation, operation, and maintenance of
23 all regulated devices must conform to one of the following standards, except where otherwise
24 specifically provided in this Article or in rules adopted pursuant to this Article:

- 25 (1) The Association for Challenge Course Technology (ACCT) ANSI/ACCT
26 03-2016 Challenge Course and Canopy/Zip Line Tour Standard.
- 27 (2) The Professional Ropes Course Association (PRCA) ANSI/PRCA
28 1.0-3-2014 Ropes Challenge Course Installation, Operation & Training
29 Standard.
- 30 (3) The European Ropes Course Association (ERCA) European Ropes Course
31 Standard (EN 15567-2:2014).
- 32 (4) The American Society for Testing and Materials (ASTM) F2959-14 Standard
33 Practice for Special Requirements for Aerial Adventure Courses.

34 **"§ 95-112.6. Registration required; applications; submission and processing.**

35 (a) Registration with the State Required. – All commercial and noncommercial operators
36 of aerial adventure courses must register with the Commissioner and are subject to an annual fee
37 that compensates the State for the cost of administering this Article. No aerial adventure course
38 shall open to the public and operate until the operator of the aerial adventure course has first
39 registered and obtained a permit for operation from the State.

40 (b) Application for Registration/Submission and Processing. – The aerial adventure
41 course application shall be submitted annually at least 30 days prior to the expiration of the
42 current permit on the form prescribed by the Commissioner and shall include the following
43 registration requirements:

- 44 (1) The name, physical address, electronic mail address, and Internet Web site of
45 the owner and the operator.
- 46 (2) The name of all liability insurance carriers and the insurance policy numbers.
- 47 (3) A certificate of inspection for the aerial adventure course showing the
48 inspector's name, the owner/operator name, and other information as required
49 by these rules.
- 50 (4) A signed certification that any modifications or additions to a regulated device
51 are in compliance with the applicable challenge course standards.

1 Upon receipt of an application, the Commissioner of Labor shall review the application. The
2 Commissioner of Labor shall approve the application, register the aerial adventure course, and
3 issue a permit to operate upon determining that the provisions of this Article have been met. The
4 submittal of a registration application does not guarantee the registration of any aerial adventure
5 course. The owner or operator must obtain a permit from the State of North Carolina prior to
6 opening any regulated device to the public.

7 (c) The operator of the regulated device shall post a copy of the permit to operate in close
8 proximity to the entry to the regulated device where it is readily visible to participants.

9 **"§ 95-112.7. Annual inspections required.**

10 An annual inspection of all aerial adventure physical elements shall be conducted in
11 accordance with the applicable challenge course standards and shall be performed as often as
12 circumstances require, but no less than once every 12 months. The annual inspection report shall
13 provide verification of the completion of all necessary corrective measures and shall be submitted
14 to the Commissioner for approval.

15 **"§ 95-112.8. Pre-opening inspection and test; training; emergency evacuation plan;**
16 **records; revocation of permit to operate.**

17 (a) An owner of a regulated device shall conduct a pre-opening inspection and test of the
18 regulated device in accordance with challenge course standards, prior to admitting the
19 participants, each day the regulated device is intended to be used.

20 (b) An owner of a regulated device shall train employees on the operation of the regulated
21 device in accordance with the applicable challenge course standards.

22 (c) An owner of a regulated device shall have an emergency evacuation plan for the
23 regulated device in accordance with challenge course standards.

24 (d) An owner of a regulated device shall maintain for at least the previous 12 months a
25 signed record of the required pre-opening inspection and test, training provided to employees,
26 emergency evacuation plan, and such other pertinent information as the Commissioner may
27 require by rule or regulation.

28 (e) The Commissioner may refuse to issue or renew or may revoke, suspend, or amend
29 the permit to operate for any regulated device upon failure by the owner or the owner's authorized
30 agent to make the required pre-opening inspection and test, to train employees, to maintain an
31 emergency evacuation plan, or to maintain the required records.

32 **"§ 95-112.9. Operation without permit; operation not in accordance with Article or rules**
33 **and regulations; operation after refusal to issue a permit.**

34 (a) No person shall operate or permit to be operated or use any regulated device without
35 a valid permit to operate.

36 (b) No person shall operate or permit to be operated or use any regulated device otherwise
37 than in accordance with this Article and the rules and regulations adopted thereunder.

38 (c) No person shall operate or permit to be operated or use any regulated device after the
39 Commissioner has refused to issue the permit to operate.

40 **"§ 95-112.10. Accidents; reporting.**

41 (a) The owner of any regulated device shall notify the Commissioner of any of the
42 following occurrences involving such device within 24 hours of the occurrence:

43 (1) Any occurrence resulting in death or injury requiring medical treatment, other
44 than first aid, by a physician. First aid means the one-time treatment or
45 observation of scratches, cuts not requiring stitches, burns, splinters, and
46 contusions, or a diagnostic procedure, including examination and X-rays,
47 which does not ordinarily require medical treatment even though provided by
48 a physician or other licensed personnel.

49 (2) Any occurrence resulting in damage to the regulated device indicating a
50 substantial defect in design, mechanics, structure, or equipment affecting the

1 future safe operation of the device. No reporting is required in the case of
2 normal wear and tear.

3 (b) An owner or operator shall keep a record of every accident or fatality with the permit
4 to operate, which shall be readily accessible to the general public. The record shall include the
5 following information:

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

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

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

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

10 **"§ 95-112.11. Operator age requirement; operator impairment.**

11 (a) Any operator of a regulated device shall be at least 18 years of age. An operator shall
12 be in attendance at all times the regulated device is in operation.

13 (b) No person shall operate a regulated device while under the influence of alcohol or any
14 other impairing substance as defined by G.S. 20-4.01(14a). It shall be a violation of this
15 subsection to knowingly permit the operation of any regulated device while the operator is under
16 the influence of an impairing substance.

17 **"§ 95-112.12. Liability insurance.**

18 (a) Insurance Required. – Any person cannot own or operate a regulated device unless
19 the person carries insurance coverage provided by an accepted insurer of at least one million
20 dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in the aggregate against
21 liability for injury to persons or property arising out of the operation of such facility or use of
22 such device. The insurance contract cannot include per person sublimits to liability. A person
23 required to be insured under this section must immediately notify the Commissioner upon receipt
24 of notice of cancellation, suspension, or nonrenewal of the policy.

25 (b) Proof of Insurance. – Any person operating a regulated device must provide proof of
26 insurance coverage upon request by the Commissioner. Upon failure of the person to provide
27 proof of insurance, the Commissioner must prevent or stop operation of the regulated device until
28 the person provides proof of the required insurance coverage.

29 (c) Acceptable Insurer. – The insurance contract must be provided by an insurer or surety
30 that is acceptable to the Commissioner and authorized to transact business in this State. The
31 Commissioner cannot accept any commercial general liability insurance policy unless it obligates
32 the insurer to give written notice to the person at least 30 days before any proposed cancellation,
33 suspension, or nonrenewal of the policy.

34 **"§ 95-112.13. Exceptions.**

35 (a) This Article does not apply to a regulated device installed at a private residence that
36 is not open to the public and for which no fee is charged.

37 (b) A regulated device owned or operated by the State, a unit of local government, or any
38 political subdivision thereof is not subject to the liability insurance requirements of
39 G.S. 95-112.12.

40 **"§ 95-112.14. Violations; civil penalties; appeal; criminal penalties.**

41 (a) Any person who violates G.S. 95-112.9(a) or (b) (Operation without permit; operation
42 not in accordance with Article or rules and regulations; operation after refusal to issue a permit)
43 is subject to a civil penalty not to exceed one thousand two hundred fifty dollars (\$1,250) for
44 each section of this Article or rule or regulation adopted pursuant to this Article violated and for
45 each day each regulated device is so operated or used.

46 (b) Any person who violates G.S. 95-112.10 (Accidents, reporting), G.S. 95-112.11(a)
47 (Operators; age requirement), or G.S. 95-112.12 (Liability insurance) is subject to a civil penalty
48 not to exceed two thousand five hundred dollars (\$2,500) for each day each regulated device is
49 so operated or used.

1 (c) Any person who violates G.S. 95-112.9(b) (Operator impairment) is subject to a civil
2 penalty not to exceed five thousand dollars (\$5,000) for each day each regulated device is so
3 operated or used.

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

8 (e) The determination of the amount of the penalty by the Commissioner is final unless
9 within 15 days after receipt of notice thereof by certified mail with return receipt, by signature
10 confirmation as provided by the U.S. Postal Service, by a designated delivery service authorized
11 pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand delivery, the person against
12 whom such action was taken files a petition for a contested case under Chapter 150B of the
13 General Statutes.

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

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

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

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

34 **"§ 95-112.15. Legal representation.**

35 It shall be the duty of the Attorney General of North Carolina, when requested, to represent
36 the Department of Labor in actions or proceedings in connection with this Article or the rules
37 adopted thereunder.

38 **"§ 95-112.16. Confidentiality of trade secrets.**

39 All information reported to or otherwise obtained by the Commissioner or the
40 Commissioner's agents or representatives in connection with any inspection or proceeding under
41 this Article or the rules and regulations adopted thereunder which contains or might reveal a trade
42 secret shall be considered confidential, except as to carrying out this Article and the rules adopted
43 thereunder or when it is relevant in any proceeding under the same. In any proceeding, the
44 Commissioner or the court shall issue orders as may be appropriate to protect the confidentiality
45 of trade secrets.

46 **"§ 95-112.17. Construction of Article; rules; severability.**

47 This Article and the rules adopted thereunder shall receive a liberal construction to the end
48 that the welfare of the people may be protected. If any provisions of either or the application
49 thereof to any person or circumstances is held to be invalid, such invalidity shall not affect those
50 provisions or applications which can be given effect without the invalid provision or application,
51 and, to that end, the provisions of this Article are severable."

1 **SECTION 3.** The Department of Labor may adopt rules, including temporary rules,
2 design and distribute forms, begin accepting applications, and establish and collect fees in order
3 that a device subject to the provisions of this act that is existing on or before December 1, 2019,
4 is in compliance with the provisions of this act and has received a permit to operate from the
5 Department of Labor by that date.

6 **SECTION 4.** Article 47 of Chapter 66 of the General Statutes is repealed.

7 **SECTION 5.** Section 2 and Section 4 of this act become effective July 1, 2020.
8 G.S. 95-112.14(g) and (h), as enacted by Section 2 of this act, apply to violations occurring on
9 or after July 1, 2020. The remainder of this act is effective when it becomes law.