

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

**HOUSE BILL 609
RATIFIED BILL**

**AN ACT TO ENHANCE LAWS PERTAINING TO THE AMUSEMENT DEVICE
SAFETY ACT OF NORTH CAROLINA.**

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 95-111.2(b) reads as rewritten:

"(b) This Article shall not apply to any device which does not normally require the supervision or services of an operator. ~~Unless they are located in an amusement park or carnival area, the following devices or attractions are exempt from this Article:~~

- ~~(1) Hot or cold air inflatable devices;~~
- ~~(2) Bumper boats; and~~
- ~~(3) Simulator devices that simulate the movement shown on various video tapes."~~

SECTION 2. G.S. 95-111.5(b) reads as rewritten:

"(b) An owner of a device subject to the provisions of this Article, or his authorized agent, is hereby required to maintain for at least ~~30 days~~ the previous 12 months a signed record of the required pre-opening inspection and test and such other pertinent information as the Commissioner may require by rule or regulation."

SECTION 3. G.S. 95-111.8 reads as rewritten:

"§ 95-111.8. Location notice.

No person shall operate for the public or permit the operation for the public any device subject to the provisions of this Article after initial assembly or after reassembly at any location within this State without first notifying the Commissioner of the intention to operate for the public. Written notice of a planned schedule of operation or use shall be received at least ~~five~~ 10 days prior to the first planned date of operation or use. ~~Notice of unscheduled use shall be given immediately to the Commissioner by telephone or telegraph."~~

SECTION 4. G.S. 95-111.11 reads as rewritten:

"§ 95-111.11. Operators.

(a) Any operator of a device subject to the provisions of this Article shall be at least 18 years of age. An operator shall operate no more than one device at any given time. An operator shall be in attendance at all times the device is in operation.

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

SECTION 5. G.S. 95-111.13 reads as rewritten:

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

(a) Any person who violates G.S. 95-111.7(a) or (b) (Operation without certificate; operation not in accordance with Article or rules and regulations) shall be subject to a civil penalty not to exceed two hundred fifty dollars (\$250.00) for each day each device is so operated or used.

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

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

(d) Any person who violates the provisions of G.S. 95-111.10(d) (Reports required) or knowingly permits the operation of an amusement device in violation of G.S. 95-111.11(a) (Operator requirements) shall be subject to a civil penalty not to exceed five hundred dollars (\$500.00).

(e) Any person who violates G.S. 95-111.9 (Operation of unsafe device) or G.S. 95-111.11(b) (Operation of an amusement device while impaired) shall be subject to a civil penalty not to exceed one thousand dollars (\$1,000).

(f) 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 size of the business of the person being charged, the gravity of the violation, the good faith of the person and the record of previous violations.

(g) The determination of the amount of the penalty by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail, 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 and in a judicial proceeding pursuant to Chapter 150B of the General Statutes, the Administrative Procedure Act.

(h) 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 corporation maintains its principal place of business, or in the county wherein the violation occurred, a certified copy of a final order of the Commissioner unappealed from, or of a final order of the Commissioner affirmed upon appeal. Whereupon, the clerk of said court shall enter judgment in accordance therewith and notify the parties. Such judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though said judgment had been rendered in a suit duly heard and determined by the superior court of the General Court of Justice.

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

SECTION 6. G.S. 95-111.13(i), as enacted by Section 5 of this act, becomes effective December 1, 2003, and applies to offenses committed on or after that date. Section 2 of this act becomes effective one year after this bill becomes law. The remainder of this act becomes effective October 1, 2003.

In the General Assembly read three times and ratified this the 5th day of June, 2003.

Beverly E. Perdue
President of the Senate

James B. Black
Speaker of the House of Representatives

Michael F. Easley
Governor

Approved _____m. this _____ day of _____, 2003