

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 767
Committee Substitute Favorable 4/18/05

Short Title: Enhance Migrant Housing Act.-AB

(Public)

Sponsors:

Referred to:

March 17, 2005

1 A BILL TO BE ENTITLED
2 AN ACT ENHANCING THE MIGRANT HOUSING LAWS OF NORTH
3 CAROLINA.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 95-223 reads as rewritten:

6 "§ 95-223. Definitions.

7 As used in this Article, unless the context requires otherwise:

- 8 (1) "Agricultural employment" means employment in any service or
9 activity included within the provisions of Section 3(f) of the Fair Labor
10 Standards Act of 1938, or section 3121(g) of the Internal Revenue
11 Code of 1986; and the handling, planting, drying, packing, packaging,
12 processing, freezing, or grading prior to delivery for storage of any
13 agricultural or horticultural commodity in its unmanufactured state and
14 including the harvesting of Christmas trees, and the harvesting of
15 saltwater ~~erabs;~~crabs.
- 16 (2) "Commissioner" means the Commissioner of Labor of North
17 ~~Carolina;~~Carolina.
- 18 (3) "Day" means a calendar ~~day;~~day.
- 19 (3a) "Department" means the North Carolina Department of Labor.
- 20 (4) "~~Established federal standard~~" means ~~those standards as set out in, and~~
21 ~~interpretations issued by, the Secretary of the United States~~
22 ~~Department of Labor in 29 C.F.R. 1910.142, as amended;~~
- 23 (4a) "Director" means the Director of the Agricultural Safety and Health
24 Bureau, who is the agent designated by the Commissioner to assist in
25 the administration of this Article.
- 26 (5) "Migrant" means an individual, and his dependents, who is employed
27 in agricultural employment of a seasonal or other temporary nature,
28 and who is required to be absent overnight from his permanent place
29 of ~~residence;~~residence.

- 1 (6) "Migrant housing" means any facility, structure, real property, or other
2 unit that is established, operated, or used as living quarters for
3 ~~migrants;~~migrants.
4 (7) "Operator" means any person who owns or controls migrant ~~housing;~~
5 ~~and~~housing.
6 (8) "Person" means an individual, partnership, association, joint stock
7 company, corporation, trust, or legal ~~representative;~~representative.
8 (9) "Substantive violation" means a violation of a safety and health
9 standard, including those that provide fire prevention, and adequate
10 and sanitary supply of water, plumbing maintenance, structurally
11 sound construction of buildings, effective maintenance of those
12 buildings, provision of adequate heat as weather conditions require,
13 and reasonable protection for inhabitants from insects and rodents. A
14 substantive violation does not include technical or procedural
15 violations of safety and health standards."

16 **SECTION 2.** Article 19 of the General Statutes is amended by adding a new
17 section to read:

18 **"§ 95-223.1. Powers and duties of the Commissioner.**

19 The Commissioner shall have the following powers and duties:

- 20 (1) To delegate to the Director of the Agricultural Safety and Health
21 Bureau the powers, duties, and responsibilities that the Commissioner
22 determines will best ensure safe and healthy migrant housing
23 conditions.
24 (2) To supervise the Director of the Agricultural Safety and Health
25 Bureau.
26 (3) To adopt, modify, or revoke any rules that are necessary for the
27 purpose of carrying out the provisions of this Article.
28 (4) To enforce rules adopted pursuant to this Article.
29 (5) To issue preoccupancy certificates to certify that housing for migrant
30 workers has been found to be in compliance with this Article and the
31 rules adopted pursuant to this Article.
32 (6) To conduct periodic postoccupancy inspections of migrant housing
33 sites in accordance with the provisions of G.S. 95-136 through
34 G.S. 95-142 to ensure that they remain in compliance with this Article
35 and the rules adopted pursuant to this Article."

36 **SECTION 3.** G.S. 95-225 is repealed.

37 **SECTION 4.** G.S. 95-226 reads as rewritten:

38 **"§ 95-226. Application for inspection. Inspections; occupancy.**

39 (a) Every operator shall request a preoccupancy inspection at least 45 days prior
40 to the anticipated date of occupancy by applying directly to the Department of Labor of
41 ~~North Carolina~~ or to the local health department. Upon receipt of an application by the
42 ~~Department of Labor of North Carolina, the Department of Labor of North Carolina~~
43 Department, the Department shall immediately notify, in writing, the appropriate local
44 health department; and the local health department shall inspect the migrant housing for

1 compliance with ~~G.S. 95-225(e) and (d)~~; this Article and the rules adopted pursuant to
2 this Article. Upon receipt of the application by the local health department, the local
3 health department shall immediately ~~notify, in writing, the Department of Labor of~~
4 ~~North Carolina~~ notify the Department in writing and shall inspect the migrant housing
5 for compliance with ~~G.S. 95-225(e) and (d)~~; this Article and the rules adopted pursuant
6 to this Article.

7 The local health department shall forward the results of its inspection to the
8 Department of ~~Labor of North Carolina~~ and to the operator. The Department of ~~Labor of~~
9 ~~North Carolina~~ shall inspect the migrant housing and certify to the operator the results
10 of the inspection.

11 (b) The Department of ~~Labor of North Carolina~~ shall provide local health
12 departments and Agricultural Extension offices with blank copies of forms for applying
13 for preoccupancy inspections.

14 (c) The application for inspection shall ~~include~~; include all of the following:

15 (1) The name, address, and telephone number of the ~~operator~~; operator.

16 (2) The location of the migrant ~~housing~~; housing.

17 (3) The anticipated number of migrants to be housed in the migrant
18 ~~housing~~; and housing.

19 (4) The anticipated dates of occupancy of the migrant housing.

20 (d) ~~Except as provided in subsection (e) of this section, an~~ Occupancy.

21 (1) Except as provided by subdivison (2) of this subsection, an operator
22 may allow the migrant housing to be occupied only if the migrant
23 housing has been certified by the Department of ~~Labor of North~~
24 Carolina or the United States Department of Labor to be in compliance
25 with all of the standards under this Article, except that an ~~this Article~~
26 and the rules adopted pursuant to this Article.

27 (2) An operator may allow migrant housing to be occupied on a
28 provisional basis if the if:

29 a. The operator applied for a preoccupancy inspection at least 45
30 days prior to the ~~expected~~ occupancy date and the preoccupancy
31 inspection was not conducted by the Department of ~~Labor of~~
32 North Carolina at least four days prior to the anticipated
33 occupancy. Upon ~~subsequent inspection by the Department of~~
34 Labor of North Carolina, such provisional occupancy shall be
35 revoked if any deficiencies have not been corrected within the
36 period of time specified by the Department of Labor of North
37 Carolina, or within two days after receipt of written notice
38 provided on site to the operator. No penalties may be assessed
39 for any violation of this Article which are found during the
40 preoccupancy inspection, unless substantive violations exist
41 during ~~provisional occupancy~~ occupancy date; or

42 b. The operator has applied for an inspection pursuant to this
43 Article and one or more migrants arrives in advance of the
44 arrival date stated in the application. The operator shall notify

1 the Department within two working days of the occupancy of
2 the migrant housing.

3 (3) The provisional occupancy authorized in subdivision (2) of this
4 subsection shall be revoked if, upon subsequent inspection by the
5 Department, the migrant housing is found not to be in compliance with
6 this Article and the rules adopted pursuant to this Article, and any
7 deficiencies have not been corrected within the period of time
8 specified by the Department, or within two days after receipt of written
9 notice provided on-site to the operator.

10 (4) Penalties may be assessed for substantive violations of this Article
11 found during the preoccupancy inspection of migrant housing which
12 has been occupied on a provisional basis.

13 ~~(e) If an operator has applied for an inspection pursuant to this Article and one or~~
14 ~~more migrants arrives in advance of the arrival date stated in the application, the~~
15 ~~operator shall notify the Department of Labor of North Carolina within two working~~
16 ~~days of the occupancy of the migrant housing. (1989, c. 91, s. 2.)"~~

17 **SECTION 5.** G.S. 95-227 reads as rewritten:

18 **"§ 95-227. Enforcement.**

19 (a) The rules adopted by the Commissioner pursuant to this Article shall include,
20 at a minimum, but not be limited to, the following requirements:

21 (1) The provisions of 29 C.F.R. § 1910.142, which is incorporated by
22 reference, subject to the modifications provided in Paragraph (b) of
23 this Rule. The Commissioner shall provide for publication in the North
24 Carolina Register any modification by the federal government of 29
25 C.F.R. § 1910.142 within 30 days of its adoption.

26 (2) The rules regarding fire safety and kitchen and dining facilities
27 adopted by the Commission for Health Services and in effect on
28 January 1, 1989.

29 (3) Whenever the outside temperature falls below 50 degrees Fahrenheit
30 and the migrant housing is occupied, heating equipment shall be
31 provided and operable. Regardless of outside temperature, this
32 equipment must be capable of maintaining living areas of 65 degrees
33 Fahrenheit. If housing is to be occupied from May 15 until September
34 1 only, no heating equipment shall be required at the time of
35 preoccupancy inspection.

36 (b) The provisions of 29 C.F.R. § 1910.142(i) shall be subject to the following
37 modifications:

38 (1) Food preparation facilities and eating areas shall be provided and
39 maintained in a clean and sanitary manner;

40 (2) A kitchen facility shall be provided with an operable stove with at least
41 one burner per five people, and in no event with less than two burners;
42 an operable refrigerator with .75 cubic feet per person minimum; a
43 table; and a sink with running hot and cold water;

1 (3) Surfaces with which food or drink come in contact shall be easily
2 accessible for cleaning and shall be nontoxic, resistant to corrosion,
3 nonabsorbent, and free of open crevices; and

4 (4) Acceptable storage facilities shall be provided and shall be kept clean
5 and free of vermin.

6 (c) In addition to the rules adopted by the Commissioner pursuant to this Article,
7 the following provisions shall apply to migrant housing:

8 (1) The rules adopted by the Commission for Health Services and
9 enforced by the Department of Environment and Natural Resources
10 that establish water quality and water sanitation standards for migrant
11 housing.

12 (2) The requirements for the collection, treatment, and disposal of
13 wastewater, as provided in Article 11 of Chapter 130A, and the rules
14 adopted by the Commission for Health Services pursuant to that
15 Article.

16 (d) For the purpose of enforcing the standards provided by this Article, the
17 provisions of G.S. 95-129, G.S. 95-130 and G.S. 95-136 through G.S. 95-142 shall
18 apply under this Article in a similar manner as they apply to places of employment
19 under OSHANC; however, ~~G.S. 95-129(4), 95-130(2), and 95-130(6) do not apply to~~
20 ~~migrant housing.~~ the Occupational Safety and Health Act of North Carolina.

21 (e) For the purposes of this Article, the ~~term:~~ following terms contained in
22 G.S. 95-129, G.S. 95-130 and G.S. 95-136 through G.S. 95-142 shall be construed as
23 follows:

24 (1) ~~"Employer" in G.S. 95-129, G.S. 95-130 and G.S. 95-136 through~~
25 ~~G.S. 95-142 shall be construed to shall mean an operator;~~ operator.

26 (2) ~~"Employee" shall be construed to mean a migrant; and~~ migrant.

27 (3) ~~"Director" shall mean the agent designated by the Commissioner to~~
28 ~~assist in the administration of this Article.~~ Director of the Agricultural
29 Safety and Health Bureau.

30 ~~The Commissioner may establish a new division to enforce this Article."~~

31 **SECTION 6.** G.S. 95-228 reads as rewritten:

32 "**§ 95-228. Waiver of rights.**

33 Agreements entered into by migrants to waive or to modify their rights under this
34 Article shall be deemed void as contrary to public policy. A waiver or modification of
35 rights by the Department of Labor of North Carolina shall be valid under this Article."

36 **SECTION 7.** This act is effective when it becomes law, except that Section
37 3 of this act becomes effective upon the effective date of the rules adopted pursuant to
38 Section 2 of this act.