

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 767
Committee Substitute Favorable 4/18/05
Committee Substitute #2 Favorable 5/2/05

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,

1 and who is required to be absent overnight from his permanent place
2 of ~~residence;~~residence.

3 (6) "Migrant housing" means any facility, structure, real property, or other
4 unit that is established, operated, or used as living quarters for
5 ~~migrants;~~migrants.

6 (7) "Operator" means any person who owns or controls migrant ~~housing;~~
7 and housing.

8 (8) "Person" means an individual, partnership, association, joint stock
9 company, corporation, trust, or legal ~~representative;~~representative.

10 (9) "Substantive violation" means a violation of a safety and health
11 standard, including those that provide fire prevention, and adequate
12 and sanitary supply of water, plumbing maintenance, structurally
13 sound construction of buildings, effective maintenance of those
14 buildings, provision of adequate heat as weather conditions require,
15 and reasonable protection for inhabitants from insects and rodents. A
16 substantive violation does not include technical or procedural
17 violations of safety and health standards."

18 (10) "Stakeholder" means any person or group of persons of common
19 interest directly or indirectly affected in his or its person, property, or
20 employment by the Commissioner's adoption of rules pursuant to this
21 Article, and who has submitted a written request to be notified of any
22 proposed rule-making activity initiated by the Commissioner pursuant
23 to this Article. The Department shall maintain a list of such
24 stakeholders and shall notify the stakeholders in accordance with this
25 Article."

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

28 **"§ 95-223.1. Powers and duties of the Commissioner.**

29 The Commissioner shall have the following powers and duties:

30 (1) To delegate to the Director of the Agricultural Safety and Health
31 Bureau the powers, duties, and responsibilities necessary to ensure safe
32 and healthy migrant housing conditions.

33 (2) To supervise the Director of the Agricultural Safety and Health
34 Bureau.

35 (3) To adopt, modify, or revoke any rules that are necessary for the
36 purpose of carrying out the provisions of this Article, or are based
37 upon recommendations by stakeholders in accordance with this
38 Article.

39 (4) To enforce rules adopted pursuant to this Article.

40 (5) To issue preoccupancy certificates to certify that housing for migrant
41 workers has been found to be in compliance with this Article and the
42 rules adopted pursuant to this Article.

43 (6) To conduct periodic postoccupancy inspections of migrant housing
44 sites in accordance with the provisions of G.S. 95-136 through

1 G.S. 95-142 to ensure that they remain in compliance with this Article
2 and the rules adopted pursuant to this Article."

3 **SECTION 3.** G.S. 95-225 reads as rewritten:

4 **"§ 95-225. Adoption of standards and interpretations; standards; rule-making**
5 **authority of Commissioner.**

6 (a) The following standards are adopted and shall be enforced by the
7 Commissioner:

8 (1) The provisions of 29 C.F.R. § 1910.142 and the interpretations issued
9 by the Secretary of the United States Department of Labor, subject to
10 the modifications provided below. The Commissioner shall provide for
11 the publication in the North Carolina Register of any modification by
12 the federal government of 29 C.F.R. § 1910.142 within 30 days of its
13 adoption. Unless otherwise provided, all established federal standards
14 are adopted and shall be enforced by the Department of Labor of North
15 Carolina.

16 (b) ~~The Commissioner shall provide for publication in the North Carolina~~
17 ~~Register any modification by the federal government of the established federal~~
18 ~~standards within 30 days of their adoption.~~

19 (c) ~~For the protection of the public health, the Commission for Health Services~~
20 ~~shall adopt and the Department of Environment and Natural Resources shall enforce~~
21 ~~rules that establish water quality and water sanitation standards for migrant housing~~
22 ~~under this Article.~~

23 (d) ~~The requirements for the collection, treatment, and disposal of sewage, as~~
24 ~~provided in Article 11 of Chapter 130A, and the rules adopted pursuant to that Article~~
25 ~~shall apply to migrant housing.~~

26 (e) (2) Whenever the outside temperature falls below 50 degrees Fahrenheit
27 and the migrant housing is occupied, heating equipment shall be
28 provided and operable. Regardless of outside temperature, this
29 equipment must be capable of maintaining living areas of 65 degrees
30 Fahrenheit. If housing is to be occupied from May 15 until September
31 1 only, no heating equipment shall be required at the time of
32 preoccupancy inspection.

33 (f) (3) ~~All migrant housing shall comply with the~~ The standards regarding fire
34 safety for migrant housing as adopted by the Commission for Health
35 Services and in effect on January 1, 1989. The Commissioner shall
36 adopt rules pursuant to this Article that incorporate the provisions of
37 these standards.

38 (g) (4) For purposes of this Article, the provisions in 29 C.F.R. § 1910.142(i)
39 shall be replaced by the following standards: established federal
40 standard provided in 29 C.F.R. 1910.142(i) does not apply. The
41 following standards shall apply to migrant housing:

42 (1) a. Food preparation facilities and eating areas shall be provided
43 and maintained in a clean and sanitary manner;

- 1 (2) b. A kitchen facility shall be provided with an operable stove with
 2 at least one burner per five people, and in no event with less
 3 than two burners; an operable refrigerator with .75 cubic feet
 4 per person minimum; a table; and a sink with running hot and
 5 cold water;
- 6 (3) c. Surfaces with which food or drink come in contact shall be
 7 easily accessible for cleaning, and shall be nontoxic, resistant to
 8 corrosion, nonabsorbent, and free of open crevices;
- 9 (4) d. Acceptable storage facilities shall be provided and shall be kept
 10 clean and free of vermin; and
- 11 (5) e. All food service facilities, other than those where migrants
 12 procure and prepare food for their own or their family's
 13 consumption, shall comply with the standards regarding kitchen
 14 and dining room facilities for migrant housing, as adopted by
 15 the Commission for Health Services and in effect on January 1,
 16 1989. The Commissioner shall adopt rules pursuant to this
 17 Article that incorporate the provisions of these standards.

18 (b) In addition to the standards referenced above and the rules adopted by the
 19 Commissioner pursuant to this Article, the following provisions shall apply to migrant
 20 housing:

- 21 (1) For the protection of the public health, the rules adopted by the
 22 Commission for Health Services and enforced by the Department of
 23 Environment and Natural Resources that establish water quality and
 24 water sanitation standards for migrant housing.
- 25 (2) The requirements for the collection, treatment, and disposal of
 26 wastewater, as provided in Article 11 of Chapter 130A of the General
 27 Statutes and the rules adopted by the Commission for Health Services
 28 pursuant to that Article.

29 (c) Prior to initiating rule-making activity pursuant to this Article in accordance-
 30 with Chapter 150B of the General Statutes, the Commissioner shall notify and consult
 31 with stakeholders who may have an interest in the proposed rules. The purpose of this
 32 notification and consultation is to ensure that the stakeholders have an opportunity to
 33 inform the Commissioner of their concerns with the proposed rules and to make
 34 recommendations to the Commissioner on changes or additions to the proposed rules."

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

36 "**§ 95-226. ~~Application for inspection.~~Inspections; occupancy.**

37 (a) Every operator shall request a preoccupancy inspection at least 45 days prior
 38 to the anticipated date of occupancy by applying directly to the Department of Labor of
 39 ~~North Carolina~~ or to the local health department. Upon receipt of an application by the
 40 ~~Department of Labor of North Carolina, the Department of Labor of North Carolina~~
 41 Department, the Department shall immediately notify, in writing, the appropriate local
 42 health department; and the local health department shall inspect the migrant housing for
 43 compliance with ~~G.S. 95-225(c) and (d).~~ this Article and the rules adopted pursuant to
 44 this Article. Upon receipt of the application by the local health department, the local

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

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

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

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

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

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

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

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

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

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

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

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

41 b. The operator has applied for an inspection pursuant to this
42 Article, and one or more migrants arrives in advance of the
43 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) For the purpose of enforcing the standards provided by this Article, the
20 provisions of G.S. 95-129, G.S. 95-130 and G.S. 95-136 through G.S. 95-142 shall
21 apply under this Article in a similar manner as they apply to places of employment
22 under OSHANC; ~~however, G.S. 95-129(4), 95-130(2), and 95-130(6) do not apply to~~
23 ~~migrant housing.~~ the Occupational Safety and Health Act of North Carolina.

24 (b) For the purposes of this Article, the ~~term;~~terms contained in G.S. 95-129,
25 G.S. 95-130, and G.S. 95-136 through G.S. 95-142 shall be construed as follows:

- 26 (1) ~~"Employer" in G.S. 95-129, G.S. 95-130 and G.S. 95-136 through~~
27 ~~G.S. 95-142 shall be construed to mean an operator;~~operator.
28 (2) ~~"Employee" shall be construed to mean a migrant; and migrant.~~
29 (3) ~~"Director" shall mean the agent designated by the Commissioner to~~
30 ~~assist in the administration of this Article.~~ Director of the Agricultural
31 Safety and Health Bureau.

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

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

34 "**§ 95-228. Waiver of rights.**

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

38 **SECTION 7.** This act becomes effective October 1, 2005.