

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 767

Short Title: Enhance Migrant Housing Act.-AB (Public)

Sponsors: Representatives Howard; and Jones.

Referred to: Agriculture.

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 ~~andhousing.~~
 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 including, but not
 28 limited to, fire safety and kitchen and dining facilities, which shall
 29 conform, so far as practicable, to the rules regarding fire safety and
 30 kitchen and dining facilities adopted by the Commission for Health
 31 Services and in effect on January 1, 1989.
 32 (4) To enforce rules adopted pursuant to this Article.
 33 (5) To issue preoccupancy certificates to certify that housing for migrant
 34 workers has been found to be in compliance with this Article and the
 35 rules adopted pursuant to this Article.
 36 (6) To conduct periodic post-occupancy inspections of migrant housing
 37 sites in accordance with the provisions of G.S. 95-136 through
 38 G.S. 95-142 to ensure that they remain in compliance with this Article
 39 and the rules adopted pursuant to this Article.

40 **SECTION 3.** G.S. 95-225 is repealed.

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

42 **"§ 95-226. Application for inspection. Inspections; occupancy.**

43 (a) Every operator shall request a preoccupancy inspection at least 45 days prior
 44 to the anticipated date of occupancy by applying directly to the Department of Labor of

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

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

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

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

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

19 (2) The location of the migrant ~~housing~~ housing.

20 (3) The anticipated number of migrants to be housed in the migrant
21 ~~housing~~ and housing.

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

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

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

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

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

- 1 b. The operator has applied for an inspection pursuant to this
2 Article and one or more migrants arrives in advance of the
3 arrival date stated in the application. The operator shall notify
4 the Department within two working days of the occupancy of
5 the migrant housing.
- 6 (3) The provisional occupancy authorized in subdivision (2) of this
7 subsection shall be revoked if, upon subsequent inspection by the
8 Department, the migrant housing is found not to be in compliance with
9 this Article and the rules adopted pursuant to this Article, and any
10 deficiencies have not been corrected within the period of time
11 specified by the Department, or within two days after receipt of written
12 notice provided on-site to the operator.
- 13 (4) Penalties may be assessed for substantive violations of this Article
14 found during the preoccupancy inspection of migrant housing which
15 has been occupied on a provisional basis.
- 16 ~~(e) If an operator has applied for an inspection pursuant to this Article and one or~~
17 ~~more migrants arrives in advance of the arrival date stated in the application, the~~
18 ~~operator shall notify the Department of Labor of North Carolina within two working~~
19 ~~days of the occupancy of the migrant housing. (1989, c. 91, s. 2.)"~~

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

21 "**§ 95-227. Enforcement.**

- 22 (a) In addition to the rules adopted by the Commissioner pursuant to this Article,
23 the following provisions shall apply:
- 24 (1) For the protection of the public health, the Commission for Health
25 Services shall adopt and the Department of Environment and Natural
26 Resources shall enforce rules that establish water quality and water
27 sanitation standards for migrant housing under this Article.
- 28 (2) The requirements for the collection, treatment, and disposal of sewage,
29 as provided in Article 11 of Chapter 130A, and the rules adopted
30 pursuant to that Article shall apply to migrant housing.
- 31 (b) For the purpose of enforcing the standards provided by this Article, the
32 provisions of G.S. 95-129, G.S. 95-130 and G.S. 95-136 through G.S. 95-142 shall
33 apply under this Article in a similar manner as they apply to places of employment
34 under OSHANC; however, G.S. 95-129(4), 95-130(2), and 95-130(6) do not apply to
35 ~~migrant housing, the Occupational Safety and Health Act of North Carolina.~~
- 36 (c) For the purposes of this Article, the ~~term:~~following terms contained in
37 G.S. 95-129, G.S. 95-130 and G.S. 95-136 through G.S. 95-142 shall be construed as
38 follows:
- 39 (1) ~~"Employer" in G.S. 95-129, G.S. 95-130 and G.S. 95-136 through~~
40 ~~G.S. 95-142 shall be construed to shall mean an operator; operator.~~
- 41 (2) ~~"Employee" shall be construed to mean a migrant; and migrant.~~
- 42 (3) ~~"Director" shall mean the agent designated by the Commissioner to~~
43 ~~assist in the administration of this Article. Director of the Agricultural~~
44 Safety and Health Bureau.

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

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

3 "**§ 95-228. Waiver of rights.**

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

7 **SECTION 7.** This act is effective when it becomes law, except that Section
8 3 of this act becomes effective upon the effective date of the rules adopted pursuant to
9 Section 2 of this act.