

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 663*

Short Title: Harvest of Dignity/Labor Reforms. (Public)

Sponsors: Representative M. Alexander (Primary Sponsor).
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Commerce and Job Development.

April 7, 2011

A BILL TO BE ENTITLED

AN ACT AMENDING THE LABOR LAWS OF NORTH CAROLINA RELATING TO
REPORTING ON INSPECTIONS OF HIGH HAZARD INDUSTRIES,
AGRICULTURAL WORKERS' HOUSING AND EMPLOYMENT CONDITIONS,
EMPLOYEE ACCESS TO TOILET FACILITIES, AND HEAT ILLNESS PREVENTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 95-136.1 reads as rewritten:

"§ 95-136.1. Special emphasis inspection program.

(a) As used in this section, a "special emphasis inspection" is an inspection by the Department's occupational safety and health division that is scheduled because of an employer's high frequency of violations of safety and health laws or because of an employer's high risk or high rate of work-related fatalities or work-related serious injuries or illnesses.

(b) The Department shall develop and implement a special emphasis inspection program that targets for special emphasis inspection employers who:

- (1) Have a high rate of serious or willful violations of any standard, rule, order, or other requirement under this Article, or of regulations prescribed pursuant to the Federal Occupational Safety and Health Act of 1970, in a one-year period;
- (2) Have a high rate of work-related deaths, or a high rate of work-related serious injuries or illnesses, in a one-year period; or
- (3) Are engaged in a type of industry determined by the Department to be at high risk for serious or fatal work-related injuries or illnesses.
- (4) Repealed by Session Laws 1997-443, s. 17(b).

To identify an employer for a special emphasis inspection, the Department shall use the most current data available from its own database and from other sources, including State and federal departments, divisions, boards, commissions, and other ~~State~~ governmental entities. The Department shall ensure that every employer targeted for a special emphasis inspection is inspected at least one time within the two-year period following targeting of the employer by the Department. The Department shall update its special emphasis inspection records at least annually.

(c) The Director shall make information about the special emphasis inspection program available prior to the date of implementation of the program.

(d) The Department shall by March 1, 1995, and annually thereafter, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division of the General Assembly on the impact of the special emphasis inspection program on safety and



1 health compliance and enforcement. At a minimum, the written report shall include all of the
2 following:

- 3 (1) The number of inspections conducted under the special emphasis program.
- 4 (2) The identification of employers inspected, the number and types of citations
5 issued, and the amount of fines issued to each employer for each citation.
- 6 (3) The criteria by which each employer listed in subdivision (2) of this
7 subsection was chosen for inspection.
- 8 (4) If employers fell into any of the criteria listed in subsection (b) of this
9 section but were not inspected, the identity of those employers and why the
10 Department did not conduct the inspection."

11 **SECTION 2.** G.S. 95-223 reads as rewritten:

12 **"§ 95-223. Definitions.**

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

- 14 (1) "Agricultural employment" means employment in any service or activity
15 included within the provisions of Section 3(f) of the Fair Labor Standards
16 Act of 1938, or section 3121(g) of the Internal Revenue Code of 1986; and
17 the handling, planting, drying, packing, packaging, processing, freezing, or
18 grading prior to delivery for storage of any agricultural or horticultural
19 commodity in its unmanufactured state and including the harvesting of
20 Christmas trees, the planting of trees, and the harvesting of saltwater
21 ~~erabs;~~crabs.
- 22 (2) "Commissioner" means the Commissioner of Labor of North
23 ~~Carolina;~~Carolina.
- 24 (3) "Day" means a calendar ~~day;~~day.
- 25 (3a) "Director" means the Director of the Agricultural Safety and Health Bureau,
26 who is the agent designated by the Commissioner to assist in the
27 administration of this Article.
- 28 (4) "Established federal standard" means those standards as set out in, and
29 interpretations issued by, the Secretary of the United States Department of
30 Labor in 29 C.F.R. 1910.142, as ~~amended;~~amended.
- 31 (5) "Migrant" means an individual, and his dependents, who is employed in
32 agricultural ~~employment of a seasonal or other temporary nature, and who is~~
33 ~~required to be absent overnight from his permanent place of~~
34 ~~residence;~~employment.
- 35 (6) "Migrant housing" or "migrant housing unit" means any facility, structure,
36 real property, or other unit that is established, operated, or used as living
37 quarters for ~~migrants;~~migrants.
- 38 (7) "Operator" means any person who owns or controls migrant ~~housing;~~ and
39 housing and any person who contracts with or employs an operator to
40 provide him or her with migrants for the purpose of performing agricultural
41 employment.
- 42 (8) "Person" means an individual, partnership, association, joint stock company,
43 corporation, trust, or legal ~~representative;~~representative.
- 44 (8a) "Reasonable cost" does not include a profit to the operator and may not
45 exceed actual cost or fair market value, whichever is less.
- 46 (8b) "Retaliatory action" means the discharge, suspension, demotion, retaliatory
47 relocation of a migrant, eviction or summary ejection, or other adverse
48 action taken against a migrant or the migrant's dependent in the terms,
49 conditions, privileges, and benefits of tenancy or employment.
- 50 (9) "Substantive violation" means a violation of a safety and health standard,
51 including those that provide fire prevention, and adequate and sanitary

1 supply of water, plumbing maintenance, structurally sound construction of
2 buildings, effective maintenance of those buildings, provision of adequate
3 heat as weather conditions require, and reasonable protection for inhabitants
4 from insects and rodents. A substantive violation does not include technical
5 or procedural violations of safety and health standards."

6 **SECTION 3.** G.S. 95-224(a)(1) reads as rewritten:

7 "(a) The provisions of this Article shall apply to all operators and migrants except:

8 (1) Any ~~person who, operator who owns housing and who, in~~ the ordinary
9 course of that person's business, regularly provides housing on a commercial
10 basis to the general ~~public; and public, and~~ who provides housing to
11 migrants of the same character and on the same or comparable terms and
12 conditions as those provided to the general ~~public; public if more than fifty~~
13 percent (50%) of the tenants are not migrants or their dependents; or".

14 **SECTION 4.** G.S. 95-225 reads as rewritten:

15 "**§ 95-225. Adoption of standards and interpretations.**

16 (a) Unless otherwise provided, all established federal standards are adopted and shall be
17 enforced by the Department of Labor of North Carolina.

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

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

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

27 (d1) Charges for migrant housing shall not exceed reasonable cost. The employer has the
28 burden of providing reasonable cost through records or other credible evidence.

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

35 (f) All migrant housing shall comply with the standards regarding fire safety for
36 migrant housing as adopted by the Commission for Public Health and in effect on January 1,
37 1989.

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

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

42 (2) A kitchen facility shall be provided with an operable stove with at least one
43 burner per ~~five-three~~ people, and in no event with less than two burners; an
44 operable refrigerator with ~~.75-two~~ cubic feet per person minimum; a ~~table;~~
45 table and chairs or benches providing sufficient seating and table space to
46 accommodate the number of migrants for which the housing is permitted;
47 and a sink with running hot and cold ~~water; water.~~

48 (3) Surfaces with which food or drink come in contact shall be easily accessible
49 for cleaning, and shall be nontoxic, resistant to corrosion, nonabsorbent, and
50 free of open ~~erevices; crevices.~~

- 1 (4) Acceptable storage facilities shall be provided and shall be kept clean and
2 free of ~~vermin;~~ and vermin.
- 3 (5) All food service facilities, other than those where migrants procure and
4 prepare food for their own or their family's consumption, shall comply with
5 the standards regarding kitchen and dining room facilities for migrant
6 housing, as adopted by the Commission for Public Health and in effect on
7 January 1, 1989.
- 8 (6) Migrants shall have access to all food preparation facilities and eating areas
9 at all times during their occupancy of the migrant housing.
- 10 (h) Each migrant shall be provided with a bed that shall include a mattress in good
11 repair with a clean cover. The Department of Labor of North Carolina inspector shall determine
12 the condition of the mattress and cover during the preoccupancy inspection. If the mattress or
13 cover is damaged beyond normal wear and tear during the migrant's occupancy of the housing,
14 the operator may charge the migrant the reasonable cost of replacing the mattress or cover.
- 15 (i) Each migrant housing unit shall have at least one working telephone, and at least
16 one working telephone line shall be provided for each 10 migrants in a migrant housing unit.
17 Emergency contact information shall be posted near the telephone, or with other postings
18 required by Article 16 of this Chapter and shall include 911, telephone number and location for
19 the nearest health clinic or hospital, and contact information for the camp operator.
- 20 (j) Each toilet, water closet, chemical toilet, and urinal shall be separated by a wall on
21 three sides at least six feet in height and by a door which can be locked from the inside.
- 22 (k) For purposes of this Article, the established federal standards provided in 29 C.F.R.
23 § 1910.142(d)(5-6) do not apply. The following standards shall apply to migrant housing:
- 24 (1) Where toilet facilities are shared, the number of water closets provided for
25 each sex shall be based on the maximum number of persons of that sex
26 which the camp is designed to house at any one time, in the ratio of one such
27 unit to each 10 persons, with a minimum of two units for any shared facility.
- 28 (2) Urinals shall be provided on the basis of one unit or two linear feet of urinal
29 trough for every 15 men. The floor from the wall and for a distance not less
30 than 15 inches measured from the outward edge of the urinals shall be
31 constructed of materials impervious to moisture. Where water under pressure
32 is available, urinals shall be provided with an adequate water flush.
- 33 (3) Privies are not permitted.
- 34 (l) Each migrant housing unit in which three or more migrants live shall have a
35 working washing machine and dryer, and at least one working washing machine and dryer shall
36 be provided for every 10 migrants.
- 37 (m) All doors opening to the exterior shall have functioning deadbolt locks, and each
38 migrant shall be provided a key to any door that opens into a common area and to any door that
39 opens into his or her sleeping quarters.
- 40 (n) All exterior windows shall have functioning locks.
- 41 (o) A migrant is entitled to receive visitors to the migrant housing provided for lawful
42 purposes. Nothing in this subsection prohibits an owner from banning or barring any visitors
43 who are engaged in criminal activity.
- 44 (p) Operators shall be responsible for all maintenance of the migrant housing unit and
45 surrounding grounds.
- 46 (q) For purposes of this Article, the established federal standard provided in 29 C.F.R. §
47 1910.142(b)(9) does not apply such that the following standards shall apply instead to migrant
48 housing:
- 49 (1) Sleeping quarters shall be provided which are separate from cooking
50 facilities.

1 (2) One shower head within a separate shower stall shall be provided for every
2 five migrants."

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

4 "**§ 95-227. Enforcement.**

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

10 (1) "Employer" in G.S. 95-129, G.S. 95-130 and G.S. 95-136 through
11 G.S. 95-142 shall be construed to mean an ~~operator~~ operator or the person or
12 entity contracting with an operator for the operator to provide that person or
13 entity with migrants for the purpose of performing agricultural employment.

14 (2) "Employee" shall be construed to mean a migrant.

15 (3) Repealed by Session Laws 2007-548, s. 5, effective August 31, 2007.

16 (b) The Commissioner may establish a new division to enforce this Article.

17 (c) The Department of Labor of North Carolina shall ~~maintain a~~ maintain all of the
18 following:

19 (1) A list of operators and the physical address of their migrant housing units,
20 units, number of beds, and the date of the annual preoccupancy inspection
21 and certification.

22 (2) The total number of migrant housing units held by each operator.

23 (3) A summary of complaints filed against each operator annually.

24 (d) The Department of Labor of North Carolina shall maintain a summary of any
25 inspections filed annually with the Division that enforce this Article, including the number and
26 type of citations issued and the violations ~~found, if any found.~~ This information shall be made
27 available to the general public upon written request within 15 days of the request.

28 (d1) The Department of Labor of North Carolina shall establish and implement
29 procedures to identify and prosecute the most serious violators of this Article, including the
30 failure to apply for and obtain permits to operate migrant housing pursuant to this Article.

31 (d2) The Department of Labor of North Carolina shall maximize the efforts of personnel
32 implementing this Article by seeking continually new resources and utilizing nontraditional
33 means, by coordinating with federal, State, and local agencies, and by training and coordinating
34 with local health departments and building inspection departments.

35 (d3) The requirements of this Article shall be performed by employees of the Department
36 of Labor of North Carolina who, to the extent feasible, shall be bilingual in both English and
37 Spanish.

38 (e) The Commissioner shall report no later than May 1 of each year to the Chairpersons
39 of the Senate Appropriations Committee on Natural and Economic Resources and the
40 Chairpersons of the House of Representatives Appropriations Subcommittee on Natural and
41 Economic Resources regarding the number of annual preoccupancy certifications issued, the
42 number of operators with one hundred percent (100%) compliance at the preoccupancy
43 inspection, the number of postoccupancy inspections conducted by the Department of Labor of
44 North Carolina, the number and type of citations and fines issued, the total number of migrant
45 worker beds in the State, and the identification of operators who fail to apply for or obtain
46 permits to operate migrant housing pursuant to this Article.

47 (f) Any right or obligation declared by this Article is enforceable by civil action, in
48 addition to other remedies at law and in equity."

49 **SECTION 6.** Article 19 of Chapter 95 of the General Statutes is amended by
50 adding a new section to read:

51 "**§ 95-227.1. Nonretaliation; civil actions.**

1 (a) An owner is prohibited from taking retaliatory action against a migrant because of
2 the migrant's good faith attempt to exercise, secure, or enforce any rights or protections existing
3 under this Article or any other federal, State, or local law.

4 (b) Any right or obligation declared by this Article is enforceable by a civil action, in
5 addition to any other remedies at law or in equity."

6 **SECTION 7.** G.S. 95-241(a)(1) reads as rewritten:

7 "(a) No person shall discriminate or take any retaliatory action against an employee
8 because the employee in good faith does or threatens to do any of the following:

9 (1) File a claim or complaint, initiate any inquiry, investigation, inspection,
10 proceeding or other action, or testify or provide information to any person
11 with respect to any of the following:

12 a. Chapter 97 of the General Statutes.

13 b. Article 2A or Article 16 of this Chapter.

14 c. Article 2A of Chapter 74 of the General Statutes.

15 d. G.S. 95-28.1.

16 e. Article 16 of Chapter 127A of the General Statutes.

17 f. G.S. 95-28.1A.

18 g. Article 52 of Chapter 143 of the General Statutes.

19 h. Article 5F of Chapter 90 of the General Statutes.

20 i. Article 19 of Chapter 95 of the General Statutes."

21 **SECTION 8.** G.S. 143-460 is amended by adding two new subdivisions to read:

22 "**§ 143-460. Definitions.**

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

24 ...

25 (10a) "Employee" means an employee of an employer who is employed in a
26 business or other capacity of the employer, including any and all business
27 units and agencies owned or controlled by the employer.

28 (10b) "Employer" means a person engaged in a business that has employees,
29 including any State or political subdivision of a State, but does not include
30 the employment of domestic workers employed in the place of residence of
31 his or her employer."

32 **SECTION 9.** G.S. 143-466 reads as rewritten:

33 "**§ 143-466. Records; information; inspection; enforcement.**

34 (a) The Board shall require licensees to maintain records with respect to the sale and
35 application of such pesticides as it may from time to time prescribe. Such relevant information
36 as the Board may deem necessary may be specified by rule. The records shall be kept for a
37 period of three years from the date of the application of the pesticide to which the records refer,
38 and shall be available for inspection and copying by the Board or its agents at its request.

39 (a1) The Board shall adopt rules requiring recording of the date, time, and field location
40 of worker reentry to the treated area after completion of the pesticide application. Such records
41 shall be subject to the requirements of subsection (a) of this section.

42 (b) The Board may publish information regarding injury which may result from
43 improper application or use of pesticides and the methods and precautions designed to prevent
44 such injury.

45 (c) The Board may provide for inspection of any equipment used for application of
46 pesticides and may require repairs or other changes before its further use for pesticide
47 application. A list of requirements that equipment shall meet may be adopted by the Board by
48 regulation.

49 (d) The Board may provide for inspection of any place of business where pesticides are
50 stored or sold and may require changes in methods of handling, displaying and storing of all

1 pesticides. A list of requirements that places of business must meet may be adopted by
2 regulation of the Board.

3 (e) For the purpose of carrying out the provisions of this Article, inspectors designated
4 by the Board may enter upon any public or private premises at reasonable times, in order:

- 5 (1) To have access for the purpose of inspecting the premises and any
6 equipment subject to this Article and such premises on which such
7 equipment is kept or stored;
- 8 (2) To inspect lands actually or reported to be exposed to pesticides;
- 9 (3) To inspect storage or disposal areas;
- 10 (4) To inspect or investigate complaints of injury to humans, land or plants; or
- 11 (5) To sample pesticides being applied, or to be applied.

12 No person shall refuse entry or access to any authorized representative of the Board who
13 requests entry for purposes of inspection, and who presents appropriate credentials, nor shall
14 any person obstruct, hamper or interfere with any such representative while in the process of
15 carrying out his official duties. Should the Board or its designated agent be denied access to
16 any land where such access was sought for the purposes set forth in this Article, the Board may
17 apply to any court of competent jurisdiction for a search warrant authorizing access to such
18 land for said purposes. The court may upon such application issue the search warrant for the
19 purposes requested.

20 (f) Any employee or any representative of an employee who suspects that a violation of
21 this Article is occurring in any workplace where the employee is employed may request an
22 inspection of that workplace by giving notice of the alleged violation to the Board or its
23 designated inspectors. The employee's name and the names of individual employees referred to
24 in the notice of violation shall not appear in any record published, released, or made available
25 by the Department of Agriculture and Consumer Services, including the notice of violation.
26 The Board and its designated inspectors may confidentially interview any employee when
27 reasonably necessary for an investigation of a suspected violation of this Article. Nothing in
28 this section shall be construed to prohibit the use of the name or statement of a witness or
29 complainant to the Board in enforcement proceedings or hearings held pursuant to this Article.
30 If a written request for any of the following statements is received by the Board no later than 12
31 days prior to the enforcement hearing, the Board shall make available to the employer at least
32 10 days prior to a scheduled enforcement hearing unredacted copies of:

- 33 (1) The statements of witnesses the Board intends to use at the enforcement
34 hearing.
- 35 (2) The statements of witnesses the Board intends to call to testify, or
- 36 (3) The statements of witnesses whom the Board does not intend to use that
37 might support an employer's affirmative defense or otherwise exonerate the
38 employer.

39 If the request for an unredacted copy of any such statements of witnesses is received less
40 than 12 days before a hearing, the statement requested shall be made available as soon as
41 practicable. The Board may permit the use of names and statements of witnesses and
42 complainants and information obtained during the course of inspections or investigations
43 conducted pursuant to this Article by public officials in the performance of their public duties."

44 **SECTION 10.** G.S. 143-469 reads as rewritten:

45 **"§ 143-469. Penalties.**

46 (a) Any person who shall be adjudged to have violated any provision of this Article, or
47 any regulation of the Board adopted pursuant to this Article, shall be guilty of a Class 2
48 misdemeanor. In addition, if any person continues to violate or further violates any provision of
49 this Article after written notice from the Board, the court may determine that each day during
50 which the violation continued or is repeated constitutes a separate violation subject to the
51 foregoing penalties.

1 (b) ~~A~~ Except as provided by subsection (b1) of this section, a civil penalty of not more
2 than two thousand dollars (\$2,000) per violation may be assessed by the Board against any
3 person who violates or directly causes a violation of any provision of this Article or any rule
4 adopted pursuant to this Article.

5 (b1) If a serious violation is found by the Board, a civil penalty of not more than twenty
6 thousand dollars (\$20,000) per violation may be assessed. The Board may assess an additional
7 penalty of up to one hundred thousand dollars (\$100,000) for any violation that causes serious
8 damage to the environment, serious injury to property, or serious injury to, or death of, any
9 person. The Board or its designated representatives may in its discretion issue fines below
10 these maximum amounts, taking into particular consideration whether the violation occurred at
11 a small farm.

12 (c) Proceedings for the assessment of civil penalties under this section shall be
13 governed by Chapter 150B of the North Carolina General Statutes. If the person assessed a civil
14 penalty fails to pay the penalty to the North Carolina Department of Agriculture and Consumer
15 Services, the Board may institute an action in the superior court of the county in which the
16 person resides or has his principal place of business to recover the unpaid amount of said
17 penalty. An action to recover a civil penalty under this section shall not relieve any party from
18 any other penalty prescribed by law.

19 ~~(d) Notwithstanding any other provision of this Article, the maximum penalty which~~
20 ~~may be assessed under this section against any person referred to in G.S. 143-460(29)a shall~~
21 ~~not exceed five hundred dollars (\$500.00). Penalties may be assessed under this section against~~
22 ~~a person referred to in G.S. 143-460(29)a only for willful violations.~~

23 (e) The clear proceeds of civil penalties assessed pursuant to this section shall be
24 remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

25 **SECTION 11.** Chapter 95 of the General Statutes is amended by adding a new
26 Article to read:

27 "Article 24.

28 "Miscellaneous Provisions.

29 "**§ 95-275. Work break requirements.**

30 (a) The federal standard provided in 29 C.F.R. § 1910.141(c)(1)(i) is adopted and shall
31 be enforced by the Department of Labor of North Carolina. In addition, the following standards
32 shall apply to employees in poultry processing plants as defined by Standard Industrial
33 Classification (SIC) code 2015 (poultry slaughtering and processing) or North American
34 Industry Classification System code 311615.

35 (b) Employees shall be provided prompt access to toilet facilities. The employee shall
36 have sole authority over the timing of toilet breaks while being expected to recognize
37 reasonable accommodation to workplace needs. Restrictions on access must be reasonable, and
38 may not cause extended delays.

39 "**§ 95-276. Heat illness.**

40 The North Carolina Department of Labor shall adopt rules to prevent heat illness in
41 agricultural workers, requiring that workers have sufficient access to drinking water and shade;
42 providing for training for employees, supervisors, and employers on heat stress prevention and
43 signs and symptoms of heat illness; providing employees with the ability to communicate with
44 emergency personnel if heat illness symptoms are experienced in the field or in migrant
45 housing; and establishing special protocols for high heat working conditions to protect
46 employee health.

47 For the purposes of this section, "heat illness" means a serious medical condition resulting
48 from the body's inability to cope with a particular heat load, and includes heat cramps, heat
49 exhaustion, heat syncope, and heatstroke."

50 **SECTION 12.** This act is effective when it becomes law.