

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 962

Short Title: Migrant Worker Housing Act.

(Public)

Sponsors: Senator Purcell.

Referred to: Commerce.

March 24, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO ENHANCE LAWS RELATED TO THE MIGRANT HOUSING ACT OF
3 NORTH 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, the planting of trees, and
15 the harvesting of 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 (4) "Established federal standard" means those standards as set out in, and
20 interpretations issued by, the Secretary of the United States
21 Department of Labor in 29 C.F.R. 1910.142, as ~~amended;~~amended.
- 22 (5) "Migrant" means an individual, and his dependents, who is employed
23 in agricultural employment ~~of a seasonal or other temporary nature,~~
24 ~~and who is required to be absent overnight from his permanent place~~
25 ~~of residence;~~ where housing is provided as an incident of employment.
- 26 (6) "Migrant housing" or "migrant housing unit" means any facility,
27 structure, real property, or other unit that is established, operated, or
28 used as living quarters for ~~migrants;~~migrants.

- 1 (7) "Operator" means any person who owns or controls migrant ~~housing;~~
 2 ~~and housing~~ and any person who contracts with or employs an operator
 3 to provide him or her with migrants for the purpose of performing
 4 agricultural employment.
- 5 (8) "Person" means an individual, partnership, association, joint stock
 6 company, corporation, trust, or legal ~~representative;~~ representative.
- 7 (8a) "Reasonable cost" does not include a profit to the operator and may
 8 not exceed actual cost or fair market value, whichever is less.
- 9 (8b) "Retaliatory action" means the discharge, suspension, demotion,
 10 retaliatory relocation of a migrant, eviction or summary ejection, or
 11 other adverse action taken against a migrant or the migrant's dependent
 12 in the terms, conditions, privileges, and benefits of tenancy or
 13 employment.
- 14 (9) "Substantive violation" means a violation of a safety and health
 15 standard, including those that provide fire prevention, and adequate
 16 and sanitary supply of water, plumbing maintenance, structurally
 17 sound construction of buildings, effective maintenance of those
 18 buildings, provision of adequate heat as weather conditions require,
 19 and reasonable protection for inhabitants from insects and rodents. A
 20 substantive violation does not include technical or procedural
 21 violations of safety and health standards."

22 **SECTION 2.** G.S. 95-224 reads as rewritten:

23 **"§ 95-224. Scope.**

24 The provisions of this Article shall apply to all operators and migrants except:

- 25 (1) Any ~~person-operator~~ who owns housing and who, in the ordinary
 26 course of that person's business, regularly provides housing on a
 27 commercial basis to the general public; and who provides housing to
 28 migrants of the same character and on the same or comparable terms
 29 and conditions as those provided to the general ~~public;~~ public,
 30 provided that more than fifty percent (50%) of the tenants are not
 31 migrants or their dependants; or
- 32 (2) A housing unit owned by one or more of the occupants and occupied
 33 solely by a family unit."

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

35 **"§ 95-225. Adoption of standards and interpretations.**

- 36 (a) Unless otherwise provided, all established federal standards are adopted and
 37 shall be enforced by the Department of Labor of North Carolina.
- 38 (b) The Commissioner shall provide for publication in the North Carolina
 39 Register any modification by the federal government of the established federal
 40 standards within 30 days of their adoption.
- 41 (c) For the protection of the public health, the Commission for Health Services
 42 shall adopt and the Department of Environment and Natural Resources shall enforce
 43 rules that establish water quality and water sanitation standards for migrant housing
 44 under this Article.

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

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

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

13 (f) All migrant housing shall comply with the standards regarding fire safety for
14 migrant housing as adopted by the Commission for Health Services and in effect on
15 January 1, 1989.

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

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

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

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

31 (4) Acceptable storage facilities shall be provided and shall be kept clean
32 and free of ~~vermin;~~ and vermin.

33 (5) All food service facilities, other than those where migrants procure and
34 prepare food for their own or their family's consumption, shall comply
35 with the standards regarding kitchen and dining room facilities for
36 migrant housing, as adopted by the Commission for Health Services
37 and in effect on January 1, 1989.

38 (6) Migrants shall have access to all food preparation facilities and eating
39 areas at all times during their occupancy of the migrant housing.

40 (h) Each migrant housing unit shall have at least one working telephone, and at
41 least one working telephone line shall be provided for each 10 migrants in a migrant
42 housing unit.

1 (i) Each toilet, water closet, chemical toilet, and urinal shall be separated by a
2 wall on three sides at least six feet in height and by a door which can be locked from the
3 inside.

4 (j) For purposes of this Article, the established federal standards provided in 29
5 C.F.R.1910.142(d)(5-6) do not apply. The following standards shall apply to migrant
6 housing:

7 (1) Where toilet facilities are shared, the number of water closets provided
8 for each sex shall be based on the maximum number of persons of that
9 sex which the camp is designed to house at any one time, in the ratio
10 of one such unit to each 10 persons, with a minimum of two units for
11 any shared facility.

12 (2) Urinals shall be provided on the basis of one unit or two linear feet of
13 urinal trough for every 15 men. The floor from the wall and for a
14 distance not less than 15 inches measured from the outward edge of
15 the urinals shall be constructed of materials impervious to moisture.
16 Where water under pressure is available, urinals shall be provided with
17 an adequate water flush.

18 (3) Privies are not permitted.

19 (k) Each migrant housing unit in which three or more migrants live shall have a
20 working washing machine and dryer, and at least one working washing machine and
21 dryer shall be provided for every 10 migrants.

22 (l) All doors opening to the exterior shall have functioning deadbolt locks, and
23 each migrant shall be provided a key to any door that opens into a common area and to
24 any door that opens into his or her sleeping quarters.

25 (m) All exterior windows shall have functioning locks.

26 (n) A migrant is entitled to receive visitors to the migrant housing provided for
27 lawful purposes. Nothing contained in this subsection shall prohibit an owner from
28 banning or barring any visitors who are engaged in criminal activity.

29 (o) Operators shall be responsible for all maintenance of the migrant housing unit
30 and surrounding grounds.

31 (p) For purposes of this Article, the established federal standard provided in 29
32 C.F.R.1910.142(b)(9) does not apply. The following standards shall apply to migrant
33 housing:

34 (1) Sleeping quarters shall be provided which are separate from cooking
35 facilities.

36 (q) Each migrant shall be provided with a mattress that is clean and in good
37 repair, as follows:

38 (1) Mattresses shall comply with Commission for Health Services rules on
39 sanitation, Title 15A Chapter 18B .0202-.0215 and G.S. 130A-273.

40 (2) Mattresses shall not be less than four inches thick and shall be the
41 same length and width as the bunks.

42 (3) Mattresses shall not have any metal, plastic, or other rigid framing
43 component.

44 (4) Mattress ticking shall be durable and water-repellent.

1 (5) Mattresses shall be of fire-resistant and nontoxic construction.

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

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

5 **"§ 95-226. Application for inspection.**

6 (a) Every operator shall request a preoccupancy inspection at least 45 days prior
7 to the anticipated date of occupancy by applying directly to the Department of Labor of
8 North Carolina or to the local health department. Upon receipt of an application by the
9 Department of Labor of North Carolina, the Department of Labor of North Carolina
10 shall immediately notify, in writing, the appropriate local health department; and the
11 local health department shall inspect the migrant housing for compliance with
12 G.S. 95-225(c) and (d). Upon receipt of the application by the local health department,
13 the local health department shall immediately notify, in writing, the Department of
14 Labor of North Carolina and shall inspect the migrant housing for compliance with
15 G.S. 95-225(c) and (d).

16 The local health department shall forward the results of its inspection to the
17 Department of Labor of North Carolina and to the operator. The Department of Labor of
18 North Carolina shall inspect the migrant housing and certify to the operator the results
19 of the inspection.

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

23 (c) The application for inspection shall include:

24 (1) The name, address, and telephone number of the operator;

25 (2) The location of the migrant housing;

26 (3) The anticipated number of migrants to be housed in the migrant
27 housing; and

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

29 (d) Except as provided in subsection (e) of this section, an operator may allow
30 the migrant housing to be occupied only if the migrant housing has been certified by the
31 Department of Labor of North Carolina or the United States Department of Labor to be
32 in compliance with all of the standards under this Article, except that an operator may
33 allow migrant housing to be occupied on a provisional basis if the operator applied for a
34 preoccupancy inspection at least 45 days prior to occupancy and the preoccupancy
35 inspection was not conducted by the Department of Labor of North Carolina at least
36 four days prior to the anticipated occupancy. Upon subsequent inspection by the
37 Department of Labor of North Carolina, such provisional occupancy shall be revoked if
38 any deficiencies have not been corrected within the period of time specified by the
39 Department of Labor of North Carolina, or within two days after receipt of written
40 notice provided on-site to the operator. No penalties may be assessed for any violation
41 of this Article which are found during the first preoccupancy inspection, inspection of a
42 migrant housing unit unless substantive violations exist during provisional occupancy.

43 (e) If an operator has applied for an inspection pursuant to this Article and one or
44 more migrants arrives in advance of the arrival date stated in the application, the

1 operator shall notify the Department of Labor of North Carolina within two working
2 days of the occupancy of the migrant housing.

3 (f) The Department of Labor of North Carolina shall conduct annual post-
4 occupancy inspections of operators who have been issued a fine in any of the previous
5 three calendar years or who have more than one complaint filed against him or her in
6 the previous three calendar years."

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

8 **"§ 95-227. Enforcement.**

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

15 (1) "Employer" in G.S. 95-129, G.S. 95-130 and G.S. 95-136 through
16 G.S. 95-142 shall be construed to mean an ~~operator~~; operator or the
17 person or entity contracting with an operator for the operator to
18 provide him or her with migrants for the purpose of performing
19 agricultural employment.

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

21 (3) "Director" shall mean the agent designated by the Commissioner to
22 assist in the administration of this Article.

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

24 (b) The Department of Labor of North Carolina shall maintain a list of operators
25 and the physical address of their migrant housing units, number and summary of
26 complaints filed annually with the division that enforces this Article, and number and
27 summary of inspections performed annually by the division that enforces this Article,
28 including the number and type of citations issued and the violations found. The list shall
29 be made available to the public upon written request within 15 days.

30 (c) If the condition of the housing is such that the Director determines that the
31 housing is uninhabitable, the migrants shall be allowed to remain in the housing for a
32 reasonable period, not to exceed 14 days, while the operator locates alternative housing
33 or makes such repairs as renders the housing inhabitable. The alternative housing must
34 be provided at the same rate or less than the rate paid by the migrants for the
35 uninhabitable housing.

36 (d) The Department of Labor of North Carolina shall establish and implement
37 procedures to identify and prosecute the most serious violators of this Article, including
38 failure to apply for or obtain permits to operate migrant housing pursuant to the Article.

39 (e) The Department of Labor of North Carolina shall maximize the efforts of
40 personnel implementing this Article by seeking to use new resources and nontraditional
41 means, by coordinating with State, local, and federal agencies, and by training and
42 coordinating with local health and building departments.

1 (f) All of the requirements of this Article shall be performed by employees of the
2 Department of Labor of North Carolina who, to the extent feasible, shall be bilingual in
3 Spanish and English.

4 (g) An owner shall not take retaliatory action against a migrant because of a good
5 faith attempt to exercise, secure, or enforce any rights or protections existing under this
6 Article or any other State or Federal law.

7 (h) Any right or obligation declared by this Article is enforceable by civil action,
8 in addition to other remedies in law and in equity."

9 **SECTION 6.** This act becomes effective January 1, 2006.