

Article 19.

Migrant Housing Act of North Carolina.

**§ 95-222. Short title; legislative purpose.**

(a) This Article may be cited as the "Migrant Housing Act of North Carolina."

(b) It is the purpose and policy of the General Assembly to conform migrant housing standards to, as much as reasonably possible, the Occupational Safety and Health Act of North Carolina, and to ensure safe and healthy migrant housing conditions. The General Assembly finds that the general welfare of the State requires the enactment of this law under the police power of the State. (1989, c. 91, s. 2.)

**§ 95-223. Definitions.**

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

- (1) "Agricultural employment" means employment in any service or activity included within the provisions of Section 3(f) of the Fair Labor Standards Act of 1938, or section 3121(g) of the Internal Revenue Code of 1986; and the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state and including the harvesting of Christmas trees, and the harvesting of saltwater crabs;
- (2) "Commissioner" means the Commissioner of Labor of North Carolina;
- (3) "Day" means a calendar day;
- (3a) "Director" means the Director of the Agricultural Safety and Health Bureau, who is the agent designated by the Commissioner to assist in the administration of this Article.
- (4) "Established federal standard" means those standards as set out in, and interpretations issued by, the Secretary of the United States Department of Labor in 29 C.F.R. 1910.142, as amended;
- (5) "Migrant" means an individual, and his dependents, who is employed in agricultural employment of a seasonal or other temporary nature, and who is required to be absent overnight from his permanent place of residence;
- (6) "Migrant housing" means any facility, structure, real property, or other unit that is established, operated, or used as living quarters for migrants;
- (7) "Operator" means any person who owns or controls migrant housing; and
- (8) "Person" means an individual, partnership, association, joint stock company, corporation, trust, or legal representative;
- (9) "Substantive violation" means a violation of a safety and health standard, including those that provide fire prevention, and adequate and sanitary supply of water, plumbing maintenance, structurally sound construction of buildings, effective maintenance of those buildings, provision of adequate heat as weather conditions require, and reasonable protection for inhabitants from insects and rodents. A substantive violation does not include technical or procedural violations of safety and health standards. (1989, c. 91, s. 2; 1993, c. 300, s. 3; 2007-548, s. 1.)

**§ 95-224. Scope; powers and duties.**

- (a) The provisions of this Article shall apply to all operators and migrants except:
  - (1) Any person who, in the ordinary course of that person's business, regularly provides housing on a commercial basis to the general public; and who provides housing to migrants of the same character and on the same or comparable terms and conditions as those provided to the general public; or
  - (2) A housing unit owned by one or more of the occupants and occupied solely by a family unit.
- (b) The Commissioner shall have the following powers and duties under this Article:
  - (1) To delegate to the Director the powers, duties, and responsibilities necessary to ensure safe and healthy migrant housing conditions.
  - (2) To supervise the Director.
  - (3) To issue preoccupancy certificates to certify that housing for migrant workers has been found to be in compliance with this Article.
  - (4) To conduct postoccupancy inspections of migrant housing in accordance with the provisions of G.S. 95-226(g). (1989, c. 91, s. 2; 2007-548, s. 2.)

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

- (a) Unless otherwise provided, all established federal standards are adopted and shall be enforced by the Department of Labor of North Carolina.
- (b) The Commissioner shall provide for publication in the North Carolina Register any modification by the federal government of the established federal standards within 30 days of their adoption.
- (c) For the protection of the public health, the Commission for Public Health shall adopt and the Department of Environmental Quality shall enforce rules that establish water quality and water sanitation standards for migrant housing under this Article.
- (d) The requirements for the collection, treatment, and disposal of sewage, as provided in Article 11 of Chapter 130A, and the rules adopted pursuant to that Article shall apply to migrant housing.
- (e) Whenever the outside temperature falls below 50 degrees Fahrenheit and the migrant housing is occupied, heating equipment shall be provided and operable. Regardless of outside temperature, this equipment must be capable of maintaining living areas of 65 degrees Fahrenheit. If housing is to be occupied from May 15 until September 1 only, no heating equipment shall be required at the time of preoccupancy inspection.
- (f) All migrant housing shall comply with the standards regarding fire safety for migrant housing as adopted by the Commission for Public Health and in effect on January 1, 1989.
- (g) For purposes of this Article, the established federal standard provided in 29 C.F.R. 1910.142(i) does not apply. The following standards shall apply to migrant housing:
  - (1) Food preparation facilities and eating areas shall be provided and maintained in a clean and sanitary manner;
  - (2) A kitchen facility shall be provided with an operable stove with at least one burner per five people, and in no event with less than two burners; an

- operable refrigerator with .75 cubic feet per person minimum; a table; and a sink with running hot and cold water;
- (3) Surfaces with which food or drink come in contact shall be easily accessible for cleaning, and shall be nontoxic, resistant to corrosion, nonabsorbent, and free of open crevices;
  - (4) Acceptable storage facilities shall be provided and shall be kept clean and free of vermin; and
  - (5) All food service facilities, other than those where migrants procure and prepare food for their own or their family's consumption, shall comply with the standards regarding kitchen and dining room facilities for migrant housing, as adopted by the Commission for Public Health and in effect on January 1, 1989.

(h) Each migrant shall be provided with a bed that shall include a mattress in good repair with a clean cover. The Department of Labor of North Carolina inspector shall determine the condition of the mattress and cover during the preoccupancy inspection. If the mattress or cover is damaged beyond normal wear and tear during the migrant's occupancy of the housing, the operator may charge the migrant the reasonable cost of replacing the mattress or cover. (1989, c. 91, s. 2; c. 727, s. 220; 1997-443, s. 11A.36; 2007-182, s. 2; 2007-548, s. 3; 2015-241, s. 14.30(u).)

#### **§ 95-226. Application for inspection.**

(a) Except as provided in subsection (f) of this section, every operator shall request a preoccupancy inspection at least 45 days prior to the anticipated date of occupancy by applying directly to the Department of Labor of North Carolina or to the local health department. Upon receipt of an application by the Department of Labor of North Carolina, the Department of Labor of North Carolina shall immediately notify, in writing, the appropriate local health department; and the local health department shall inspect the migrant housing for compliance with G.S. 95-225(c) and (d). Upon receipt of the application by the local health department, the local health department shall immediately notify, in writing, the Department of Labor of North Carolina and shall inspect the migrant housing for compliance with G.S. 95-225(c) and (d).

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

At the time the Department of Labor of North Carolina conducts a preoccupancy inspection, the Department of Labor of North Carolina shall provide the operator with a copy of the guide for employers on compliance with the Immigration and Nationality Act, 8 U.S.C. § 1101, et seq., as amended, prepared by the United States Department of Justice.

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

(c) The application for inspection shall include:

- (1) The name, address, and telephone number of the operator;
- (2) The location of the migrant housing;
- (3) The anticipated number of migrants to be housed in the migrant housing; and

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

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

(e) If an operator has applied for an inspection pursuant to this Article and one or more migrants arrives in advance of the arrival date stated in the application, the operator shall notify the Department of Labor of North Carolina within two working days of the occupancy of the migrant housing.

(f) If an operator receives a preoccupancy inspection rating from the Department of Labor of North Carolina of one hundred percent (100%) compliance for a particular migrant housing unit for two consecutive years, in the third year the operator shall have the right to conduct the preoccupancy inspection for that particular migrant housing unit himself or herself. Operators conducting their own preoccupancy inspections pursuant to this subsection shall, at least 45 days prior to occupancy, register the migrant housing with the Department of Labor of North Carolina and notify in writing the appropriate local health department. The local health department shall inspect the migrant housing for compliance with G.S. 95-225(c) and (d). The operator shall request a preoccupancy inspection under subsection (a) of this section in the year following a year when the operator conducted a self-inspection under this subsection.

(g) In addition to any other applicable federal or State law or regulation, the Department may only conduct a postoccupancy inspection of operators:

- (1) Who were subject to an annual preoccupancy inspection by the Department of Labor of North Carolina and found not to be in one hundred percent (100%) compliance at that inspection.
- (2) Who were assessed a civil penalty by the Department of Labor of North Carolina during the previous calendar year for violations of this Article or pursuant to G.S. 95-136(a)(3).
- (3) Who did not undergo a preoccupancy inspection, unless the operator conducted a self-inspection pursuant to subsection (f) of this section.
- (4) In response to a referral from a federal, State, county, or local government official or any person with firsthand knowledge of an alleged violation of this Article or of an alleged safety or health hazard whom the Department of Labor of North Carolina deems to have provided a credible referral. (1989, c. 91, s. 2; 2007-548, ss. 3.1, 3.2, 4.)

## **§ 95-227. Enforcement.**

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

- (1) "Employer" in G.S. 95-129, G.S. 95-130 and G.S. 95-136 through G.S. 95-142 shall be construed to mean an operator.
- (2) "Employee" shall be construed to mean a migrant.
- (3) Repealed by Session Laws 2007-548, s. 5, effective August 31, 2007.

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

(c) The Department of Labor of North Carolina shall maintain a list of operators and the physical address of their migrant housing units, number of beds, and the date of the annual preoccupancy inspection and certification.

(d) The Department of Labor of North Carolina shall maintain a summary of any inspections filed annually with the Division that enforce this Article, including the number and type of citations issued and the violations found, if any.

(e) The Commissioner shall report no later than May 1 of each year to the Chairpersons of the Senate Appropriations Committee on Natural and Economic Resources, the Chairpersons of the House of Representatives Appropriations Committee on Agriculture and Natural and Economic Resources, the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources, and the Fiscal Research Division regarding the number of annual preoccupancy certifications issued, the number of operators with one hundred percent (100%) compliance at the preoccupancy inspection, the number of postoccupancy inspections conducted by the Department of Labor of North Carolina, the number and type of citations and fines issued, the total number of migrant worker beds in the State, and the identification of operators who fail to apply for or obtain permits to operate migrant housing pursuant to this Article. (1989, c. 91, s. 2; 1997-35, s. 1; 2007-548, s. 5; 2017-57, s. 14.1(pp).)

#### **§ 95-228. Waiver of rights.**

Agreements entered into by migrants to waive or to modify their rights under this Article shall be deemed void as contrary to public policy. A waiver or modification of rights by the Department of Labor of North Carolina shall be valid under this Article. (1989, c. 91, s. 2.)

#### **§ 95-229. Construction of Article; severability.**

This Article shall be liberally construed to the end that the safety and health of the migrants of this State may be effectuated and protected.

The provisions of this Article are severable, and if any provision of this Article is held invalid by a court of competent jurisdiction, the invalidity may not affect other provisions of the Article, which can be given effect without the invalid provision. (1989, c. 91, s. 2.)

#### **§ 95-229.1. Actions upon finding uninhabitable migrant housing.**

If the Department of Labor of North Carolina determines that housing provided to migrants under this Article is uninhabitable, but is not reasonably expected to cause death or serious physical harm, the migrants shall be allowed to remain in the housing for a reasonable period, not to exceed 14 days, while the operator locates alternative housing or makes necessary repairs to make the housing habitable. No additional civil penalties arising from the condition of the housing shall be levied against the operator during the 14-day period after the housing has been determined to be uninhabitable in which the migrants are allowed to remain in the housing. The alternative housing shall be provided at the same rate or less than the rate paid by the migrants for the uninhabitable housing. If the Director determines, after recommendation by an inspector, that housing provided to migrants could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated, the migrants shall not be allowed to stay in the housing, and alternative housing shall be provided by the operator at the same rate or less than the rate paid by the migrants for the uninhabitable housing. (2007-548, s. 5.1.)

**§ 95-229.2. Reserved for future codification purposes.**

**§ 95-229.3. Reserved for future codification purposes.**

**§ 95-229.4. Reserved for future codification purposes.**