

GENERAL ASSEMBLY OF NORTH CAROLINA
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HOUSE BILL DRH30199-MV-18

Short Title: Improve Enforcement/Migrant Housing. (Public)

Sponsors: Representative Butler.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO BETTER ENSURE THE CORRECTION OF MIGRANT HOUSING
3 VIOLATIONS.

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~~ Agricultural employment. –
9 Employment in any service or activity included within the provisions of
10 Section 3(f) of the Fair Labor Standards Act of 1938, or section 3121(g) of the
11 Internal Revenue Code of 1986; and the handling, planting, drying, packing,
12 packaging, 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 saltwater
15 ~~erabs;crabs.~~
- 16 (2) ~~"Commissioner" means the Commissioner.~~ – The Commissioner of Labor of
17 North ~~Carolina;Carolina.~~
- 18 (3) ~~"Day" means a Day.~~ – A calendar day;day.
- 19 (3a) ~~"Director" means the Director.~~ – The Director of the Agricultural Safety and
20 Health Bureau, who is the agent designated by the Commissioner to assist in
21 the administration of this Article.
- 22 (4) ~~"Established federal standard" means those standards as~~ Established federal
23 standard. – Any standard set out in, and interpretations issued by, the Secretary
24 of the United States Department of Labor in 29 C.F.R. 1910.142, as
25 ~~amended;amended.~~
- 26 (5) ~~"Migrant" means an Migrant.~~ – An individual, and ~~his~~ the individual's
27 dependents, who is employed in agricultural employment of a seasonal or
28 other temporary nature, and who is required to be absent overnight from his
29 permanent place of ~~residence;residence.~~
- 30 (6) ~~"Migrant housing" means any Migrant housing.~~ – Any facility, structure, real
31 property, or other unit that is established, operated, or used as living quarters
32 for ~~migrants;migrants.~~
- 33 (7) ~~"Operator" means any Operator.~~ – Any person who owns or controls migrant
34 ~~housing; andhousing.~~



- 1 (8) ~~"Person" means an~~ Person. – An individual, partnership, association, joint
 2 stock company, limited liability company, corporation, trust, or legal
 3 ~~representative;~~ representative.
 4 (9) ~~"Substantive violation" means a~~ Substantive violation. – A violation of a
 5 safety and health standard, including those that provide fire prevention, and
 6 adequate and sanitary supply of water, plumbing maintenance, structurally
 7 sound construction of buildings, effective maintenance of those buildings,
 8 provision of adequate heat as weather conditions require, and reasonable
 9 protection for inhabitants from insects and rodents. A substantive violation
 10 does not include technical or procedural violations of safety and health
 11 standards."

12 **SECTION 2.** G.S. 95-226 reads as rewritten:

13 **"§ 95-226. Application for inspection.**

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

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

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

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

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

- 35 (1) The name, address, and telephone number of the ~~operator;~~ operator.
 36 (2) The location of the migrant ~~housing;~~ housing, including the address, property
 37 tax identification number, and parcel identifier number.
 38 (3) The anticipated number of migrants to be housed in the migrant ~~housing;~~
 39 and housing.
 40 (4) The anticipated dates of occupancy of the migrant housing.
 41 (5) The affidavit required by subsection (h) of this section in a form prescribed
 42 by the North Carolina Department of Labor.

43 (d) Except as provided in subsections (e) and (f) of this section, an operator may allow
 44 the migrant housing to be occupied only if the migrant housing has been certified by the
 45 Department of Labor of North Carolina or the United States Department of Labor to be in
 46 compliance with all of the standards under this Article, except that an operator may allow migrant
 47 housing to be occupied on a provisional basis if the operator applied for a preoccupancy
 48 inspection at least 45 days prior to occupancy and the preoccupancy inspection was not conducted
 49 by the Department of Labor of North Carolina at least four days prior to the anticipated
 50 occupancy. Upon subsequent inspection by the Department of Labor of North Carolina, the
 51 provisional occupancy shall be revoked if any deficiencies have not been corrected within the

1 period of time specified by the Department of Labor of North Carolina, or within two days after
2 receipt of written notice provided on-site to the operator. No penalties may be assessed for any
3 violation of this Article which are found during the preoccupancy inspection, unless substantive
4 violations exist during provisional occupancy.

5 (e) If an operator has applied for an inspection pursuant to this Article and one or more
6 migrants arrives in advance of the arrival date stated in the application, the operator shall notify
7 the Department of Labor of North Carolina within two working days of the occupancy of the
8 migrant housing. In no event shall a migrant occupy the housing, provisionally or otherwise, for
9 a period exceeding 14 days without a satisfactory inspection.

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

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

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

34 (h) Each operator shall include as an attachment to the application in subsection (c) of
35 this section a signed affidavit in a form prescribed by the North Carolina Department of Labor
36 certifying under penalty of perjury as follows:

- 37 (1) If the operator named on the application is an individual, the operator shall
38 certify under the penalty of perjury that he or she is the owner or lessee of the
39 migrant housing identified under subdivision (c)(2) of this section and that he
40 or she is not, at the time of application or during any period for which the
41 inspection applies, barred by any State or federal authority from participation
42 in temporary foreign agricultural labor programs.
- 43 (2) If the operator named on the application is a limited liability company, a
44 corporation, a partnership, or any other entity properly organized under the
45 laws of this State, or an entity formed in another state but properly doing
46 business within this State, the operator shall certify under the penalty of
47 perjury that it is the lessee or the owner of the migrant housing identified under
48 subdivision (c)(2) of this section and that neither the operator, nor any
49 precursor in interest, any owner, manager, member, investor, nor anyone in
50 control, in whole or in part, of the operator, and further that none of the
51 foregoing is, at the time of application or during any period for which the

1 inspection applies, barred by any State or federal authority from participation
2 in temporary foreign agricultural labor programs.

3 (3) If the migrant housing identified under subdivision (c)(2) of this section has
4 been conveyed to a new applicant owner or lessee, but that migrant housing
5 has been in violation during any previous inspection and the violation remains
6 unresolved to the satisfaction of the Department of Labor, the new operator,
7 whether an individual or an entity, shall certify under penalty of perjury as
8 required by subdivision (1) or (2) of this subsection as applicable, and the
9 inspecting authority will prescribe corrective action and applicable time
10 frames as necessary for occupancy of the realty, subject to the limitations set
11 forth in subsection (e) of this section."

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

13 **"§ 95-227. Enforcement.**

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

19 (1) "Employer" in G.S. 95-129, G.S. 95-130 and G.S. 95-136 through
20 G.S. 95-142 shall be construed to mean an operator.

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

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

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

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

27 (d) The Department of Labor of North Carolina shall maintain a summary of any
28 inspections filed annually with the Division that enforce this Article, including the number and
29 type of citations issued and the violations found, if any. For each violation, the Department shall
30 document in the summary the name of the operator and identifying information of the migrant
31 housing under G.S. 95-226(c)(2). The Department shall cross-reference each physical address
32 documented under this subsection to the physical address on each application for inspection for
33 compliance with the requirements of this Article as pertaining not only to a named operator, but
34 also to the physical address of the migrant housing.

35 (d1) The Department of Labor of North Carolina shall not provide a preoccupancy
36 inspection to any operator known to the Department to be barred by any State or federal authority
37 from participation in temporary foreign agricultural labor programs or to be otherwise in
38 violation of this Article. If the Department of Labor of North Carolina determines that an operator
39 has falsified the affidavit or any information contained in the affidavit required by
40 G.S. 95-226(h), then the Department shall not provide a preoccupancy inspection to the operator
41 for three years from the date of the affidavit.

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

1 **SECTION 4.** Section 1 of this act becomes effective October 1, 2025, and applies to
2 applications for inspection submitted on or after that date. Section 2 of this act is effective when
3 it becomes law and applies to inspections conducted on or after that date. The remainder of this
4 act is effective when it becomes law.