

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

**SESSION LAW 2007-548
SENATE BILL 1466**

AN ACT TO MAKE CHANGES RELATING TO HEALTH AND SAFETY TO THE
MIGRANT HOUSING ACT OF NORTH CAROLINA AND TO DIRECT THE
NORTH CAROLINA HOUSING FINANCE AGENCY TO STUDY THE
DEVELOPMENT OF A LOW-INTEREST LOAN PROGRAM FOR
AGRICULTURAL EMPLOYERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 95-223 is amended by adding a new subdivision to read:

"§ 95-223. Definitions.

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

...

(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."

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

"§ 95-224. ~~Scope.~~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)."

SECTION 3. G.S. 95-225 is amended by adding a new subsection to read:

"(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."

SECTION 3.1. G.S. 95-226(a) reads as rewritten:

"(a) ~~Every~~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."

SECTION 3.2. G.S. 95-226(d) reads as rewritten:

"(d) Except as provided in ~~subsection~~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, ~~such~~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."

SECTION 4. G.S. 95-226 is amended by adding two new subsections to read:

"(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."

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

"§ 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~~; operator.
- (2) "Employee" shall be construed to mean a ~~migrant~~; and migrant.
- (3) "~~Director~~" shall ~~mean the agent designated by the Commissioner to assist in the administration of this Article.~~

(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 and the Chairpersons of the House of Representatives Appropriations Subcommittee on Natural and Economic Resources 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."

SECTION 5.1. Article 19 of Chapter 95 of the North Carolina General Statutes is amended by adding a new section to read:

"§ 95-299.1. 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."

SECTION 6. The North Carolina Housing Finance Agency shall study (i) the need for low-cost financing for the construction and rehabilitation of migrant housing in North Carolina and (ii) the feasibility of a program to provide such financing in the State. The Agency shall report its findings no later than July 1, 2008, to the Joint Legislative Commission on Governmental Operations.

SECTION 7. The first report required by G.S. 95-227(f), as enacted by Section 5 of this act, is due no later than May 1, 2008.

SECTION 8. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 23rd day of July, 2007.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 10:25 p.m. this 31st day of August, 2007