

By: Bernal, Romero, Jr., et al.

H.B. No. 238

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the regulation of migrant labor housing facilities;
3 changing the amount of a civil penalty.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Subchapter LL, Chapter 2306, Government Code, is
6 amended by amending Section 2306.933 and adding Sections 2306.934,
7 2306.935, 2306.936, 2306.937, 2306.938, 2306.939, and 2306.940 to
8 read as follows:

9 Sec. 2306.933. CIVIL PENALTY. (a) A person who violates
10 this subchapter or a rule adopted under this subchapter is subject
11 to a civil penalty of not less than \$50 for each person occupying
12 the migrant labor housing facility in violation of this subchapter
13 [\$200] for each day that the violation occurs.

14 (b) An ~~[The county attorney for the county in which the~~
15 ~~violation occurred, or the attorney general, at the request of the~~
16 ~~department, shall bring an]~~ action ~~[in the name of the state]~~ to
17 collect a civil ~~[the]~~ penalty under this section may be brought by:

18 (1) the department through the contested case hearing
19 process described by Section 2306.930(b);

20 (2) the county attorney for the county in which the
21 violation occurred, or the attorney general, at the request of the
22 department; or

23 (3) a migrant agricultural worker if:

24 (A) a complaint regarding the violation for which

1 the civil penalty is sought has been submitted under Section
2 2306.934; and

3 (B) at the time the complaint described by
4 Paragraph (A) is submitted, the worker:

5 (i) lives in the migrant labor housing
6 facility that is the subject of the complaint; and

7 (ii) is not temporarily in the United
8 States under an H2-A visa authorized by 8 U.S.C. Section
9 1101(a)(15)(H)(ii)(a).

10 (c) An action to collect a civil penalty under this section
11 may not be brought while:

12 (1) a contested case hearing, brought by the
13 department under Section 2306.930(b) and relating to the same
14 migrant labor housing facility, is pending;

15 (2) an action for injunctive relief relating to the
16 same violation is pending under Section 2306.932;

17 (3) an action brought by a county attorney or the
18 attorney general and relating to the same migrant labor housing
19 facility is pending; or

20 (4) the operator of the migrant labor housing facility
21 that is the subject of the action is:

22 (A) waiting for the facility to be inspected
23 under Section 2306.935(c) to confirm remediation of the violation
24 that is the subject of the action; or

25 (B) providing housing at a facility under Section
26 2306.936(d) to which the migrant agricultural workers who occupied
27 the facility that is the subject of the action have been relocated.

1 (d) A civil penalty under this section begins accruing on
2 the earlier of:

3 (1) for a violation with a remediation period
4 described by Section 2306.935, the day that:

5 (A) the department determines based on
6 information submitted under Section 2306.935(b) that the operator
7 has failed to remedy the violation; or

8 (B) an inspection described by Section
9 2306.935(c) establishes that the migrant housing facility operator
10 has failed to remedy the violation; or

11 (2) for a violation with a remediation period
12 described by Section 2306.936, the 31st day following the date that
13 notification of the complaint is received from the department,
14 unless the operator has relocated under Section 2306.936(d) the
15 migrant agricultural workers who occupied the facility that is the
16 subject of the complaint.

17 (e) The department by rule shall adopt a penalty schedule
18 that increases the amount of the penalty assessed against a person
19 who repeatedly violates this subchapter or rules adopted under this
20 subchapter.

21 (f) A penalty collected under Subsection (b)(1) or (2) shall
22 be deposited to the credit of the general revenue fund and may be
23 appropriated only to the department for the enforcement of this
24 subchapter.

25 Sec. 2306.934. COMPLAINT; NOTICE; DISMISSAL. (a) In this
26 section, "designated representative" means an individual or
27 organization to whom a migrant agricultural worker has given

1 written authorization to exercise the worker's right to file a
2 complaint under this section.

3 (a-1) The department by rule shall establish a process for:

4 (1) the submission to the department of a complaint
5 regarding a migrant labor housing facility;

6 (2) determining whether a complaint is unfounded or
7 does not violate the standards adopted by the department; and

8 (3) the investigation, resolution, or dismissal of a
9 complaint submitted under Subdivision (1), including confirmation
10 of remediation through the methods described by Sections 2306.935
11 and 2306.936.

12 (a-2) The process established under Subsection (a-1)(1)
13 must allow the submission of complaints:

14 (1) only by:

15 (A) an occupant of the migrant labor housing
16 facility that is the subject of the complaint;

17 (B) a prospective occupant of the migrant labor
18 housing facility that is the subject of the complaint;

19 (C) the designated representative of a person
20 described by Paragraph (A) or (B); or

21 (D) an individual, including the owner or tenant
22 of an adjacent property, that has observed a clear violation of this
23 subchapter; and

24 (2) through the department's Internet website, in
25 person at any department office, or by telephone or written notice
26 to the department.

27 (b) Not later than the fifth day after the date on which the

1 department receives a complaint, the department shall notify the
2 operator of the migrant labor housing facility that is the subject
3 of the complaint. Notice under this subsection must include:

4 (1) the date that the complaint was received;

5 (2) the subject matter of the complaint;

6 (3) the name of each person contacted in relation to
7 the complaint, if any; and

8 (4) the timeline for remedying a complaint that is not
9 otherwise dismissed by the department.

10 (c) If the department is unable to make contact with an
11 operator of a migrant labor housing facility for the purpose of
12 -serving a notification of a complaint, the department shall serve
13 the notification of the complaint via registered or certified mail,
14 return receipt requested.

15 (d) If the department determines that a complaint is
16 unfounded or does not violate the standards adopted by rule, the
17 department may dismiss the complaint and shall include a statement
18 of the reason for the dismissal in the record of the complaint. The
19 department shall provide timely notice of any dismissal of the
20 complaint, including the explanation for the dismissal, to the
21 operator of the migrant labor housing facility that is the subject
22 of the complaint.

23 (e) A designated representative may not be required to
24 reveal the name of any migrant agricultural worker on whose behalf
25 the representative submitted a complaint under this section if the
26 department reviews the written authorization establishing the
27 representation and verifies that the representative is authorized

1 to submit the complaint.

2 Sec. 2306.935. REMEDIATION OF COMPLAINT IN GENERAL. (a)
3 Subject to Section 2306.936, not later than the seventh day after
4 the date that notice is received under Section 2306.934, the
5 operator of a migrant labor housing facility shall remedy the
6 complaint.

7 (b) The department by rule shall establish a procedure by
8 which the operator of a migrant labor housing facility may submit
9 proof of remediation of a complaint through visual evidence and a
10 sworn affidavit.

11 (c) For an operator of a migrant labor housing facility who
12 receives notice under Section 2306.934(c) or who does not submit
13 proof of remediation in the manner provided by Subsection (b), the
14 department shall have the facility inspected as soon as possible
15 following the seventh day after the date that notice is received
16 under Section 2306.934, to ensure remediation of the complaint.

17 Sec. 2306.936. REMEDIATION OF COMPLAINT REGARDING CERTAIN
18 VIOLATIONS. (a) This section applies only to a complaint that
19 alleges a violation that the department determines poses an
20 imminent hazard or threat to the health and safety of the occupants
21 of the facility, including violations of rules adopted by the
22 department concerning sanitation.

23 (b) Subject to Subsection (d), not later than the 30th day
24 after the date that notice is received under Section 2306.934, the
25 operator of a migrant labor housing facility that is the subject of
26 a complaint described by Subsection (a) shall remedy the complaint.

27 (c) The department may refer a complaint described by

1 Subsection (a) to a local authority for immediate inspection of the
2 migrant labor housing facility.

3 (d) The department by rule shall establish a procedure for
4 requiring the owner of a migrant labor housing facility to relocate
5 or provide for the relocation to another housing facility of the
6 occupants of a facility that is the subject of a complaint under
7 Subsection (a) if the remediation of that complaint is projected to
8 take longer than a period of 30 days. A housing facility to which a
9 person is relocated under this subsection:

10 (1) must meet the occupancy standards adopted under
11 this subchapter;

12 (2) must be located in the same vicinity as the vacated
13 facility; and

14 (3) may not require a rent payment from a displaced
15 migrant agricultural worker that exceeds the rent charged for the
16 vacated facility.

17 (e) Subsection (d) does not apply to a migrant agricultural
18 worker who is temporarily in the United States under an H2-A visa
19 authorized under 8 U.S.C. Section 1101(a)(15)(H)(ii)(a).

20 Sec. 2306.937. RETALIATION PROHIBITED. A person who owns,
21 establishes, maintains, operates, or otherwise provides a migrant
22 labor housing facility, a person who employs a migrant agricultural
23 worker who occupies a migrant labor housing facility, or a farm
24 labor contractor may not retaliate against a person for filing a
25 complaint or providing information in good faith relating to a
26 possible violation of this subchapter.

27 Sec. 2306.938. ATTORNEY'S FEES. The court in a suit brought

1 under this subchapter may award reasonable attorney's fees to the
2 prevailing party.

3 Sec. 2306.939. INTERAGENCY COOPERATION. (a) The
4 department shall identify other state agencies that may interact
5 with occupants of migrant housing facilities to assist the
6 department in identifying and locating unlicensed migrant labor
7 housing facilities.

8 (b) Information provided to the department under this
9 section:

10 (1) may be used only for the purposes of identifying
11 and locating unlicensed migrant labor housing facilities;

12 (2) must be free of identification information
13 relating to individual migrant agricultural workers; and

14 (3) is confidential and not subject to disclosure
15 under Chapter 552.

16 Sec. 2306.940. OUTREACH AND EDUCATION. (a) The department
17 shall provide:

18 (1) to migrant agricultural workers in different
19 regions of the state, educational materials or programs that are
20 presented in English, Spanish, and other languages as appropriate
21 and that inform the workers of their rights and remedies under this
22 subchapter; and

23 (2) to persons who own, establish, maintain, operate,
24 procure, make arrangements for, or otherwise provide migrant labor
25 housing facilities, educational materials or programs that are
26 presented in English, Spanish, and other languages as appropriate
27 and that inform the persons of their obligations under this

1 subchapter.

2 (b) To better provide the services described by Subsection
3 (a), the department shall:

4 (1) ensure that, in each region of the state where
5 migrant labor housing facilities are most common, there are persons
6 capable of providing the information described by Subsection (a) in
7 English, Spanish, and other languages as appropriate; and

8 (2) conduct research, including by surveying migrant
9 agricultural workers, concerning:

10 (A) what types of migrant labor housing
11 facilities are most common in different regions of the state; and

12 (B) what regions of the state most need
13 additional or improved migrant labor housing facilities.

14 SECTION 2. Not later than March 1, 2024, the Texas
15 Department of Housing and Community Affairs shall adopt the rules
16 necessary to implement Subchapter LL, Chapter 2306, Government
17 Code, as amended by this Act.

18 SECTION 3. The change in law made by this Act in amending
19 Section 2306.933, Government Code, and adding Sections 2306.934,
20 2306.935, 2306.936, 2306.938, and 2306.939, Government Code,
21 applies only to a violation that occurs on or after the effective
22 date of this Act. A violation that occurs before the effective date
23 of this Act is governed by the law in effect on the date the
24 violation occurred, and the former law is continued in effect for
25 that purpose. For purposes of this section, a violation occurs
26 before the effective date of this Act if any element of the
27 violation occurs before that date.

1 SECTION 4. This Act takes effect September 1, 2023.