87R3733 JAM-F

By:  Romero, Jr. H.B. No. 862

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of migrant labor housing facilities; authorizing an increase in the amount of a fee; changing the amount of a civil penalty.

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

SECTION 1.  Section 2306.922, Government Code, is amended to read as follows:

Sec. 2306.922.  LICENSE REQUIRED. A person may not:

(1)  establish, maintain, or operate a migrant labor housing facility without obtaining a license for the facility from the department; or

(2)  procure, make arrangements for, or otherwise provide housing for migrant agricultural workers without ensuring that the applicable migrant labor housing facility is licensed under this subchapter.

SECTION 2.  The heading to Section 2306.923, Government Code, is amended to read as follows:

Sec. 2306.923.  LICENSE APPLICATION; FEE [~~APPLICATION INSPECTION~~].

SECTION 3.  Section 2306.923, Government Code, is amended by amending Subsection (d) and adding Subsections (e), (f), and (g) to read as follows:

(d)  An applicant who seeks to substitute an inspection conducted by the United States Department of Labor or the Texas Workforce Commission for a pre-occupation inspection conducted by the department under Section 2306.924 must include with the application:

(1)  individualized affirmations regarding the facility's compliance with each state standard established by this subchapter; and

(2)  electronically submitted digital images of the facility that hold metadata verifying when and where the images were taken.

(e)  The department shall prescribe the form and manner of an application made under this section.

(f)  The application must be accompanied by a reasonable [~~the~~] license fee established by the board by rule in an amount sufficient to cover the costs of administering this subchapter, including costs associated with conducting inspections and reinspections under this subchapter.

(g)  A fee collected under this section shall be deposited to the credit of the general revenue fund and may be appropriated to the department for the administration of this subchapter.

SECTION 4.  The heading to Section 2306.924, Government Code, is amended to read as follows:

Sec. 2306.924.  PRE-OCCUPATION INSPECTION.

SECTION 5.  Section 2306.925(a), Government Code, is amended to read as follows:

(a)  If a migrant labor housing facility for which a license application is made does not meet the reasonable minimum standards of construction, sanitation, equipment, and operation required by rules adopted under this subchapter, the department at the time of inspection shall give the license applicant in writing the reasons that the facility does not meet those standards. The applicant may remedy the deficiency and request the department to reinspect the facility not later than the 10th [~~60th~~] day after the date on which the reasons are given.

SECTION 6.  Section 2306.926(b), Government Code, is amended to read as follows:

(b)  The license expires on the first anniversary of the date of issuance. Not later than the 60th day before the date a license is scheduled to expire, the department shall give notice of the expiration to the license holder.

SECTION 7.  Subchapter LL, Chapter 2306, Government Code, is amended by adding Section 2306.9261 to read as follows:

Sec. 2306.9261.  THIRD-PARTY APPEAL OF LICENSE DETERMINATION. The department by rule shall adopt procedures through which third parties, including migrant agricultural workers and advocacy groups, may appeal the issuance or denial of a license or the imposition of a condition on a license.

SECTION 8.  Subchapter LL, Chapter 2306, Government Code, is amended by amending Sections 2306.927, 2306.928, and 2306.929 and adding Section 2306.9281 to read as follows:

Sec. 2306.927.  [~~LICENSE~~] POSTING OF LICENSE AND COMPLAINT INFORMATION. A person who holds a license issued under this subchapter shall post [~~the license~~] in the licensed migrant labor housing facility at all times during the maintenance or operation of the facility a copy of:

(1)  the license; and

(2)  information describing in English and Spanish the complaint procedures provided by Section 2306.929.

Sec. 2306.928.  INSPECTION OF FACILITIES. (a)  Before conducting an inspection of a migrant labor housing facility under this section, an authorized representative of the department must give or make a reasonable attempt to give notice to the persons who:

(1)  are the providers of the facility, based on evidence available to the department; and

(2)  if applicable, are alleged to be the providers of the facility in any complaint filed under this chapter.

(b)  An authorized representative of the department, after giving or making a reasonable attempt to give notice under Subsection (a):

(1)  shall inspect the facility:

(A)  on receipt of a complaint under Section 2306.929, including a report of an unlicensed migrant labor housing facility; and

(B)  at least once during the probable period of use of the facility as stated under Section 2306.923(c)(3); and

(2)  [~~to the operator of a migrant labor housing facility,~~] may otherwise enter and inspect the facility during reasonable hours and investigate conditions, practices, or other matters as necessary or appropriate to determine whether a person has violated this subchapter or a rule adopted under this subchapter.

(c)  In addition to the inspections required under Subsection (b)(1), the department by rule shall establish an annual quota of proactive inspections of suspected unlicensed or noncompliant migrant labor housing facilities. The quota established under this subsection may not be less than 50 percent of the number of migrant labor housing facilities licensed under this subchapter in the preceding state fiscal year.

(d)  During an inspection conducted under Subsection (b)(1), the inspector shall:

(1)  conduct interviews with not less than 10 percent of the occupants of the facility, including any person who submitted a complaint requiring the inspection under Subsection (b)(1)(A), if known;

(2)  make written notes regarding the inspection at the time of the inspection or immediately after the inspection; and

(3)  take photographs of any violations.

(e)  An interview under Subsection (d)(1) must be conducted:

(1)  after working hours or on rest days, to the extent possible; and

(2)  out of the presence of any person who owns or establishes or who maintains, operates, or otherwise provides the migrant labor housing facility or any person who employs the migrant agricultural workers occupying the facility.

Sec. 2306.9281.  INSPECTION REPORT. (a) After an inspection, the inspector shall submit to the department a report containing:

(1)  a narrative regarding the alleged violation and the methods used to investigate the alleged violation;

(2)  a determination of whether the alleged violation, or any other violation, exists; and

(3)  evidence supporting the determination made under Subdivision (2), including any photographs taken under Section 2306.928(d)(3).

(b)  A report under Subsection (a) must be made available to the public on the department's Internet website. The department shall redact each migrant agricultural worker's name and other personal information contained in a report made available under this subsection.

(c)  The department by rule shall establish and require the use of a standardized inspection report form for conducting inspections under Section 2306.928.

Sec. 2306.929.  COMPLAINTS [~~FEE~~]. (a) The department by rule shall:

(1)  establish procedures for the submission, investigation, and resolution of complaints of alleged violations of this subchapter, including a procedure through which other state agencies that receive a complaint under Subsection (b)(2) can report the complaint to the department; and

(2)  adopt a standardized complaint form.

(b)  The procedures established under Subsection (a)(1) must allow the submission of complaints:

(1)  anonymously or by a third party; and

(2)  through the department's Internet website, in person at any nonprofit organization that assists migrant agricultural workers in finding employment or at any state agency, by telephone, or in writing.

(c)  The form adopted under Subsection (a)(2) must allow for the collection of information regarding:

(1)  the name, address, and contact information of:

(A)  the employer;

(B)  the farm labor contractor; and

(C)  the migrant labor housing facility provider;

(2)  the address, including a unit number, and location of the facility and directions to the facility;

(3)  the number of migrant agricultural workers:

(A)  currently occupying the facility; and

(B)  occupying the facility during the peak period of occupancy;

(4)  the dates the facility has been occupied and the approximate length of the season for which the facility will be occupied;

(5)  the type of work performed by the workers occupying the facility;

(6)  whether the postings required under Section 2306.927 are displayed;

(7)  complaints about the facility; and

(8)  any other information the department considers necessary.

(d)  The department shall consider a report regarding an unlicensed migrant labor housing facility to be a complaint under this section.

(e)  The department shall make available to a person submitting a complaint, if the identity of that person is known, information regarding other housing and transportation resources available to the person [~~The board shall set the license fee in an amount not to exceed $250~~].

SECTION 9.  Subchapter LL, Chapter 2306, Government Code, is amended by adding Section 2306.9305 to read as follows:

Sec. 2306.9305.  DUTY TO PROVIDE HOUSING ON SUSPENSION OR REVOCATION OF LICENSE. (a) The department by rule shall establish procedures requiring the owner or provider of a migrant labor housing facility, on suspension or revocation of a license as provided by Section 2306.930, to relocate or provide for the relocation of the occupants of the facility to another facility that:

(1)  meets the occupancy standards of this subchapter; and

(2)  is located in the same area as the vacated facility.

(b)  An owner or provider required to relocate an occupant under Subsection (a) shall pay any rental cost of the relocation facility that exceeds the rent of the vacated facility.

SECTION 10.  The heading to Section 2306.931, Government Code, is amended to read as follows:

Sec. 2306.931.  ENFORCEMENT; ADOPTION OF RULES REGARDING HEALTH AND SAFETY AND LICENSING.

SECTION 11.  Section 2306.931(e), Government Code, is amended to read as follows:

(e)  The board by rule shall adopt minimum standards for issuing, revoking, or suspending a license issued under this subchapter, including rules that provide for the immediate suspension or revocation of a license for certain violations that constitute threats to the health and safety of persons living in migrant labor housing facilities.

SECTION 12.  Subchapter LL, Chapter 2306, Government Code, is amended by amending Section 2306.933 and adding Sections 2306.934, 2306.935, and 2306.936 to read as follows:

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

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

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

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

(3)  a migrant agricultural worker who, at the time of the violation, lived in the migrant labor housing facility that is the subject of the violation.

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

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

Sec. 2306.934.  ATTORNEY'S FEES. A person against whom a civil penalty is assessed under Section 2306.933 is liable for paying the costs and attorney's fees of the person who brought the action under Section 2306.933(b).

Sec. 2306.935.  RETALIATION PROHIBITED. A person who owns, establishes, maintains, operates, procures, makes arrangements for, or otherwise provides a migrant labor housing facility, a person who employs a migrant agricultural worker who occupies a migrant labor housing facility, or a farm labor contractor may not retaliate against a person for filing a complaint or providing information in good faith relating to a possible violation of this subchapter.

Sec. 2306.936.  OUTREACH AND EDUCATION. (a) The department shall provide:

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

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

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

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

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

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

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

SECTION 13.  Not later than March 1, 2022, the Texas Department of Housing and Community Affairs shall adopt the rules necessary to implement Subchapter LL, Chapter 2306, Government Code, as amended by this Act.

SECTION 14.  (a) Except as provided by Subsection (b) of this section, the change in law made by this Act applies only to an administrative or regulatory action taken on or after the effective date of this Act. An administrative or regulatory action taken before the effective date of this Act is governed by the law applicable to the administrative or regulatory action immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(b)  The change in law made by this Act in amending Section 2306.933, Government Code, and adding Section 2306.934, Government Code, applies only to a violation that occurs on or after the effective date of this Act. A violation occurs before the effective date of this Act if any element of the violation occurs before that date. A violation that occurs before the effective date of this Act is governed by the law in effect on the date the violation occurred, and the former law is continued in effect for that purpose.

SECTION 15.  This Act takes effect September 1, 2021.