WEST VIRGINIA CODE CHAPTER 47 ARTICLE 1A

WV Legislature

§47-1A-1. Purpose of article.

The purpose of this article is to protect the purchaser of articles of bedding as herein defined against disease and fraud.

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§47-1A-2. Definitions.

As used in this article, unless the contents clearly require otherwise:

"Commissioner" means commissioner of labor.

"Department" means state department of labor.

"Bedding" or "articles of bedding" includes upholstered furniture and filling material (as herein defined) and any mattress, pillow, cushion, quilt, bed pad, comforter, upholstered spring bed, headboard, box springs, davenport or day bed, bedsprings, metal couch, metal bed, metal cot, metal cradle, metal bassinette, which is wholly or partly upholstered and is used or intended for use for sleeping, resting or reclining purposes.

"Upholstered furniture" means any article of household furniture wholly or partly stuffed or filled with soft material which is used or intended for use for sitting, resting or reclining purposes."Upholstered furniture" does not include any seat or cushion which is used in any automobile, truck, bus or airplane.

"Filling material" includes any hair, down, feathers, wool, cotton, kapok, or other soft material used in the manufacture of and for filling articles of bedding or upholstered furniture.

"New" means any material or article which has not been previously used for any purpose, including by-products produced in the manufacture of any fabric and material reclaimed from new fabric: Provided, however, That an article of bedding returned by the purchaser for exchange, alteration, or correction within thirty days after date of delivery after original sale at retail, shall be deemed to be a new article, but if such article is returned later than thirty days after the date of such delivery, such article shall be deemed to be secondhand.

"Secondhand" means any material or article of which prior use has been made, except as otherwise provided in this article.

"Manufacture,""making,""make," or "made" includes altering, repairing, finishing or preparing articles of bedding or upholstered furniture or filling materials for sale, including remaking or renovating when done away from the home of the owner.

"Sale,""sell," or "sold" includes offering or exposing for sale or exchange or lease or consigning or delivery in consignment for sale, exchange or lease or holding in possession with like intent.

"Person" shall include persons, partnerships, corporations and associations.

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§47-1A-3. Sales of new or secondhand bedding prohibited unless tagged; sales of secondhand filling material as new prohibited; presence of secondhand material or bedding as evidence of sale or use.

No person shall sell as new any article of bedding unless it is made from all new material and shall be tagged as hereinafter provided.

No person shall sell, representing it to be new material, any secondhand hair, down, feathers, wool, cotton, kapok or other material used for filling articles of bedding.

No person shall sell any article of bedding made from secondhand material unless it shall be tagged as hereinafter provided.

For the purposes of this article, the presence on the premises of any maker or vendor of any secondhand filling material or article of bedding shall be presumptive evidence of the sale or use.

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§47-1A-4. Bedding and filling material exposed to disease to be sterilized and tagged before sale.

No person shall sell any article of bedding, or any filling material used in the making thereof, which has been used by or about any person having an infectious or contagious disease unless such article or material shall have been sterilized and is tagged as hereinafter provided.

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§47-1A-5. Filling material from any animal or fowl or unsanitary material to be sterilized.

No person shall use any filling material to make any article of bedding for sale that is made from material (a) that comes from any animal or fowl, (b) that contains any bugs, vermin, insects or filth, (c) that is unsanitary, unless such material has been thoroughly sterilized by a process approved by the commissioner.

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§47-1A-6. Secondhand filling material to be sterilized.

No person shall use any filling material to make any article of bedding for sale that is made from material that is secondhand unless such material has been thoroughly sterilized by a process approved by the commissioner.

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§47-1A-7. Registration by sellers of bedding or filling material required.

No person, firm or corporation shall sell or offer for sale any article of bedding or filling material, as defined in this article, in the State of West Virginia, unless the person, firm or corporation is registered and paid the registration fee as defined in section fourteen of this article.

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§47-1A-8. Altering, defacing or removing tag or stamp.

No person other than a purchaser at retail for his own use or benefit, except as herein otherwise provided, shall remove, deface, alter or cause to be removed, defaced or altered, any tag or inspection stamp attached to an article of bedding: Provided, however, That immediately after material used for filling has been removed from its container, the tag and inspection stamp thereon shall be removed and destroyed by the person removing such material.

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§47-1A-9. Counterfeiting stamps or permits.

No person shall have in his possession or shall make, use or sell any counterfeit or colorable imitation of the inspection stamp or permit required by this article. Each counterfeited or imitated stamp or permit made, used, sold, offered for sale, delivered or consigned for sale shall constitute a separate offense.

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§47-1A-10. Sterilization processes; permits; fees.

NOTE: During the 2017 Regular Session of the Legislature, this section was amended by both House Bill 2948 and Senate Bill 419 and there has been no judicial ruling to determine which, if either, amendments prevail. Both versions are provided here.

As amended by House Bill 2948:

(a) Any sterilization process used in connection herewith shall be approved by the commissioner. Every person desiring to operate such sterilization process shall first obtain a numbered permit from the commissioner and shall not operate such process unless such permit is kept conspicuously posted in his or her establishment. Application for such permit shall be accompanied by the specifications for the sterilization process to be employed by the applicant, in such form as the commissioner shall require. The commissioner shall take final action upon all completed permit applications within thirty days of receipt if the application is uncontested, or within ninety days if the application is contested. Such permit shall expire one year from date of issue.

(b) The commissioner may revoke or suspend any permit for violation of the provisions of this article. Upon notification of such revocation or suspension, the person to whom the permit was issued, or his or her successor or assignee, shall forthwith return such permit to the commissioner.

As amended by Senate Bill 419:

(a) Any sterilization process used in connection herewith shall be approved by the commissioner. Every person desiring to operate such sterilization process shall first obtain a numbered permit from the commissioner and shall not operate such process unless such permit is kept conspicuously posted in his or her establishment. Application for such permit shall be accompanied by the specifications for the sterilization process to be employed by the applicant, in such form as the commissioner shall require. Such permit shall expire one year from date of issue.

(b) The commissioner may revoke or suspend any permit for violation of the provisions of this article. Upon notification of such revocation or suspension, the person to whom the permit was issued, or his or her successor or assignee, shall forthwith return such permit to the commissioner.

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§47-1A-11. Statements required on tags to be affixed to bedding.

(1) Every article of bedding made for sale, sold, or offered for sale shall have attached thereto a tag on which is stated the name of the filling material used, that such material used is new or secondhand and, when required to be sterilized, that such material has been sterilized and the number of the sterilization permit. Such tag shall also contain the name and address of the maker or the vendor and the registry number, as hereinafter provided, of the maker.

(2) In the description of the filling material used on any tag attached to an article of bedding, no term or designation intended or likely to mislead shall be used; but where such article contains more than one material, the amount of such materials shall be stated on the tag and there shall be no variance in excess of 10 percent from the amount stated on the tag: Provided, That no variance shall be allowed for filling material which is described as “all”, “pure”, “100%” or terms of similar import.

(3) A complete secondhand article of bedding which has not been remade or renovated may be sold “as is” without being sterilized, but the original tag shall be removed by the vendor and he or she shall attach a tag stating that the article is secondhand – “contents unknown”. This requirement shall not apply to articles sold at public auction, the sale of antique furniture, or to a private sale from the home of the owner direct to the purchaser: Provided, That the exceptions herein stated shall not authorize the sale of an article of bedding that has been exposed to infectious or contagious disease and which, after such exposure, has not been sterilized and approved for use.

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§47-1A-12. Tags to be approved by commissioner; material, color, form and size of tags.

(1) Whenever a tag is required by this article, it shall be approved by the commissioner. Tags shall be made of muslin, linen or other material of like durability and shall be the same color stock throughout. Paper-faced tags shall not be used.

(2) For designating all new material, the tags shall be white; for designating secondhand or renovated material or articles, the tag shall be yellow; for designating articles or materials placed off-sale by the commissioner, as hereinafter provided, the tag shall be blue; and for designating articles or materials exposed to infectious or contagious disease and declared "unclean" by the commissioner, as hereinafter provided, the tag shall be red.

(3) Statements required on tags shall be legibly printed or stamped on one side only, in the English language, and in letters at least one eighth of an inch in height. Tags attached to mattresses or pillows shall be at least six square inches in area. The commissioner may permit smaller tags or he may require larger tags for other articles. On each tag, there shall be a certification that such article complies with the requirements of law, but such tag also may state that the article complies with the law of any other state.

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§47-1A-13. Commissioner's authority to prohibit sales; tagging bedding or material exposed to disease "unclean."

(1) The commissioner shall order off-sale, and may so tag, any article of bedding or material therefor, which is not tagged as hereinbefore required or which is tagged with a tag bearing a misleading term, description, designation or statement and no articles or materials placed off-sale or seized by the commissioner, or any duly authorized employee of the bedding division, shall be sold nor shall the contents thereof be altered, interfered with or removed in whole or in part, nor shall the articles or contents thereof be removed from the premises where placed off-sale or seized until such articles or materials are released by the commissioner. All articles or materials placed off-sale or seized shall be subject to frequent examination by the commissioner or his duly authorized inspector. Such articles or materials must be so placed or stored as to be readily accessible at all times and shall be produced for examination upon demand of the commissioner or any such employee made upon the person or persons in charge of the establishment or premises where such articles or materials are placed off-sale or were seized.

(2) If the commissioner or any duly authorized employee of the bedding division shall find any article of bedding or filling material which has been used by or about any person having an infectious or contagious disease, he shall tag such article of bedding or material with a tag bearing the word "unclean" in conspicuous letters. Such tag shall not be removed except by the commissioner or such duly authorized employee.

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§47-1A-14. Annual registration and permit fees.

(a) The annual registration fee for all manufacturers shipping or selling articles of bedding in the State of West Virginia shall be $90, payable on the first day of the fiscal year. Any manufacturer who submits an annual registration fee on or after July 16 shall pay a $25 late fee in addition to the annual fee.

(b) The annual sterilizer permit fee shall be $90, payable on the first day of the fiscal year. Any sterilizer who submits an annual permit fee on or after July 16 shall pay a $25 late fee in addition to the annual fee.

(c) The fee for reissuing a revoked or expired registration or permit shall be $90.

(d) All fees paid pursuant to this article shall be paid to the Commissioner of Labor and deposited in an appropriated special revenue account hereby created in the State Treasury to be known as the Bedding and Upholstery Fund and expended for the implementation and enforcement of this article. Through June 30, 2019, amounts collected which are found from time to time to exceed funds needed for the purposes set forth in this article may be utilized by the commissioner as needed to meet the division's funding obligation: Provided, That beginning July 1, 2019, amounts collected may not be utilized by the commissioner as needed to meet the division's funding obligations.

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§47-1A-15. Organization of bedding division; rules and regulations; enforcement of article.

The commissioner of labor shall have the power and duty, to:

(1) Create and organize a division of the department of labor to be known as the "bedding division" for the purpose of administering and enforcing the provisions of this article; (2) appoint, remove and fix the compensation of the employees of the bedding division; (3) prescribe uniform rules pertaining to and not in conflict with the provisions of this article, to carry out the intent and purpose of this article; (4) invoke any legal, equitable or special remedy for the enforcement of orders or the provisions of this chapter; (5) cooperate with other agencies of the State of West Virginia for the purpose of securing laboratory analyses of the filling material used in articles of bedding; (6) exercise any other power necessary for the proper administration of the division of bedding, and the enforcement of the provisions contained in this article.

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§47-1A-16.

Repealed.

Acts, 1963 Reg. Sess., Ch. 89.

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§47-1A-17. Power of inspection and seizure; obstruction of commissioner or employees prohibited.

Every place where articles of bedding are made, remade or renovated, or materials therefor are prepared or sterilized, where such articles or materials are sold, shall be subject to inspection by the commissioner or duly authorized employee of the bedding division who shall have the power to inspect the manufacture and sale or delivery of all articles or materials covered by this article, to open and examine the contents thereof and power to seize and hold for evidence any article of bedding, in whole or in part, which he has reason to believe is made or sold or held in possession in violation of this article. No person shall interfere with, obstruct or otherwise hinder the commissioner or an employee of the bedding division in the performance of his duties.

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§47-1A-18. Penalties for violations.

Any person who violates a provision of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall, for a first offense, be fined not less than $50 nor more than $500; for a second or subsequent offense, shall be fined not less than $100 nor more than $1,000 or imprisoned for not more than thirty days, or both, such fine and imprisonment to be within the discretion of the court.

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