

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1953

ENROLLED

SENATE BILL NO. 137

(By Mr. Winters, by request)

PASSED March 2 1953

In Effect thirty days from Passage

FILED IN THE OFFICE OF THE SECRETARY OF STATE
OF WEST VIRGINIA MAR 5 1953
D. PITT O'BRIEN,
SECRETARY OF STATE

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Senate Bill No. 137

(By MR. WINTERS, by request)

[Passed March 2, 1953; in effect ninety days from passage.]

AN ACT to amend chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, to be designated article one-a, relating to the regulation and control of bedding and upholstery businesses and prescribing penalties for violations thereof.

Be it enacted by the Legislature of West Virginia:

That chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, to be designated article one-a, to read as follows:

Section 1. *Purpose of Article.*—The purpose of this
2 article is to protect the purchaser of articles of bedding

3 as herein defined against disease and fraud.

Sec. 2. *Definitions.*—As used in this article, unless the
2 contents clearly require otherwise:

3 “Commissioner” means commissioner of labor.

4 “Department” means State department of labor.

5 “Bedding” or “Articles of Bedding” includes uphol-
6 stered furniture and filling material (as herein defined)
7 and any mattress, pillow, cushion, quilt, bed pad, com-
8 forter, upholstered spring bed, head board, box springs,
9 davenport or day bed, bed springs, metal couch, metal
10 bed, metal cot, metal cradle, metal bassinette, which is
11 wholly or partly upholstered and is used or intended for
12 use for sleeping, resting or reclining purposes.

13 “Upholstered Furniture” means any article of house-
14 hold furniture wholly or partly stuffed or filled with soft
15 material which is used or intended for use for sitting,
16 resting or reclining purposes. “Upholstered furniture”
17 does not include any seat or cushion which is used in any
18 automobile, truck, bus or airplane.

19 “Filling Material” includes any hair, down, feathers,
20 wool, cotton, kapok, or other soft material used in the

21. manufacture of and for filling articles of bedding or up-
22 holstered furniture.

23 "New" means any material or article which has not
24 been previously used for any purpose, including by-prod-
25 ucts produced in the manufacture of any fabric and
26 material reclaimed from new fabric: *Provided, however,*
27 That an article of bedding returned by the purchaser for
28 exchange, alteration, or correction within 30 days after
29 date of delivery after original sale at retail, shall be
30 deemed to be a new article, but if such article is returned
31 later than thirty days after the date of such delivery, such
32 article shall be deemed to be second-hand.

33 "Second-hand" means any material or article of which
34 prior use has been made, except as otherwise provided
35 in this article.

36 "Manufacture," "making," "make," or "made" includes
37 altering, repairing, finishing or preparing articles of bed-
38 ding or upholstered furniture or filling materials for sale,
39 including remaking or renovating when done away from
40 the home of the owner.

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

45 "Person" shall include persons, partnerships, corpora-
46 tions and associations.

Sec. 3. *Sales of Bedding Prohibited Unless Filling Ma-*
2 *terial is Correctly Represented and Tagged.*—No person
3 shall sell as new any article of bedding unless it is made
4 from all new material and shall be tagged as hereinafter
5 provided.

6 No person shall sell, representing it to be new material,
7 any second-hand hair, down, feathers, wool, cotton, kapok
8 or other material used for filling articles of bedding.

9 No person shall sell any article of bedding made from
10 second-hand material unless it shall be tagged as here-
11 inafter provided.

12 For the purposes of this article, the presence on the
13 premises of any maker or vendor of any second-hand
14 filling material or article of bedding shall be presumptive
15 evidence of the sale or use.

Sec. 4. *Selling Infected Material Prohibited.*—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.

Sec. 5. *Filling Material From Any Animal or Fowl 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.

Sec. 6. *Second-hand 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 second-hand unless such material has been thoroughly sterilized by a process approved by the commissioner.

Sec. 7. *Requirement for State Inspection Stamps.*—No person shall sell any article of bedding or filling material

3 herein required to be tagged unless there is affixed on
4 the tag an inspection stamp as required by this article:
5 *Provided, however,* Nothing herein contained shall be
6 deemed to require an inspection stamp to be affixed on
7 the tag attached to an article of bedding made in this
8 state for shipment and sale outside of this state; and:
9 *Provided further,* That this section shall not require stamps
10 to be affixed to articles of bedding sold at public auction,
11 or sold as antique furniture, or sold at a private sale from
12 the home of the owner direct to the purchaser.

Sec. 8. *Altering, Defacing or Removing Tag or Stamp.*—

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

Sec. 9. *Counterfeiting Stamps or Permits.*—No person
2 shall have in his possession or shall make, use or sell
3 any counterfeit or colorable imitation of the inspection
4 stamp or permit required by this article. Each counter-
5 feited or imitated stamp or permit made, used, sold, of-
6 fered for sale, delivered or consigned for sale shall con-
7 stitute a separate offense.

Sec. 10. *Sterilization Permits and Fees.*—(1) Any ster-
2 ilization process used in connection herewith shall be ap-
3 proved by the commissioner. Every person desiring to
4 operate such sterilization process shall first obtain a num-
5 bered permit from the commisisoner and shall not oper-
6 ate such process unless such permit is kept conspicuously
7 posted in his establishment. The fee for an original
8 permit shall be twenty-five dollars. Application for such
9 permit shall be accompanied by the specifications for the
10 sterilization process to be employed by the applicant, in
11 such form as the commissioner shall require. Such per-
12 mit shall expire one year from date of issue and the
13 fee for annual renewal of the sterilization permit shall
14 be ten dollars.

15 (2) Every application for a sterilization permit to be
16 held in a state other than West Virginia shall be approved
17 only after personal inspection of the applicant's sterilizer
18 or disinfecter by the commissioner or an authorized em-
19 ployee of the bedding division of the department. The
20 expenses for such inspections out of the state shall be
21 paid by the applicant.

22 (3) The commissioner may revoke or suspend any per-
23 mit for violation of the provisions of this article. Upon
24 notification of such revocation or suspension, the person
25 to whom the permit was issued, or his successor or as-
26 signee, shall forthwith return such permit to the com-
27 missioner. For reissuing a revoked or expired permit,
28 the fee shall be the same as for an original permit.

Sec. 11. *Statements to Be Required On Tags to Be*
2 *Affixed to Bedding.*—(1) Every article of bedding made
3 for sale, sold or offered for sale shall have attached there-
4 to a tag on which is stated the name of the filling material
5 used, that such material used is new or second-hand and,
6 when required to be sterilized, that such material has
7 been sterilized and the number of the sterilization permit.

8 Such tag shall also contain the name and address of the
9 maker or the vendor and the registry number, as herein-
10 after provided, of the maker.

11 (2) Every remade or renovated article of bedding not
12 for sale, before returned to the owner for his own use,
13 shall have attached thereto a tag which, in addition to
14 the statements hereinabove required, shall state the name
15 and address of the remaker or renovator or the statement
16 "remade and renovated for" followed by the name and
17 address of the person for whom the article of bedding is
18 renovated.

19 (3) In the description of the filling material used on
20 any tag attached to an article of bedding, no term or
21 designation intended or likely to mislead shall be used;
22 but where such article contains more than one material,
23 the amount of such materials shall be stated on the tag
24 and there shall be no variance in excess of ten percentum
25 from the amount stated on the tag: *Provided, however,*
26 That no variance shall be allowed for filling material
27 which is described as "all," "pure," "100%" or terms of
28 similar import.

29 (4) A complete second-hand article of bedding which
30 has not been remade or renovated may be sold "as is"
31 without being sterilized but the original tag shall be re-
32 moved by the vendor and he shall attach a tag stating
33 that the article is second-hand—"contents unknown."
34 This requirement shall not apply to articles sold at public
35 auction, the sale of antique furniture, or to a private sale
36 from the home of the owner direct to the purchaser:
37 *Provided however,* That the exceptions herein stated shall
38 not authorize the sale of an article of bedding that has
39 been exposed to infectious or contagious disease and
40 which, after such exposure, has not been sterilized and
41 approved for use.

Sec. 12. *Form Of Tags to Be Approved By Commis-*
2 *sioner.*—(1) Whenever a tag is required by this article,
3 it shall be approved by the commissioner. Tags shall be
4 made of muslin, linen or other material of like durabil-
5 ity and shall be the same color stock throughout. Paper
6 faced tags shall not be used.

7 (2) For designating all new material, the tags shall
8 be white; for designating second-hand or renovated ma-

9 terial or articles, the tag shall be yellow; for designating
10 articles or materials placed off-sale by the commissioner,
11 as hereinafter provided, the tag shall be blue; and for
12 designating articles or materials exposed to infectious or
13 contagious disease and declared "unclean" by the com-
14 missioner, as hereinafter provided, the tag shall be red.

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

Sec. 13. *Commissioner's Authority to Prohibit Sales.*—

2 (1) The commissioner shall order off-sale, and may so
3 tag, any article of bedding or material therefor, which is
4 not tagged as hereinbefore required or which is tagged
5 with a tag bearing a misleading term, description, desig-

6 nation or statement and no articles or materials placed
7 off-sale or seized by the commissioner, or any duly author-
8 ized employee of the bedding division, shall be sold nor
9 shall the contents thereof be altered, interfered with or
10 removed in whole or in part, nor shall the articles or con-
11 tents thereof be removed from the premises where placed
12 off-sale or seized until such articles or materials are re-
13 leased by the commissioner. All articles or materials
14 placed off-sale or seized shall be subject to frequent exam-
15 ination by the commissioner or his duly authorized in-
16 spector. Such articles or materials must be so placed or
17 stored as to be readily accessible at all times and shall
18 be produced for examination upon demand of the com-
19 missioner or any such employee made upon the person
20 or persons in charge of the establishment or premises
21 where such articles or materials are placed off-sale or
22 were seized.

23 (2) If the commissioner or any duly authorized em-
24 ployee of the bedding division shall find any article of
25 bedding or filling material which has been used by or
26 about any person having an infectious or contagious dis-

27 ease, he shall tag such article of bedding or material with
28 a tag bearing the word "unclean" in conspicuous letters.
29 Such tag shall not be removed except by the commis-
30 sioner or such duly authorized employee.

Sec. 14. *Inspection Stamps; Registration; Yearly Fee.*—

2 Adhesive inspection stamps as provided for by this article
3 shall be furnished by the commissioner in quantities of
4 not less than one thousand for which the applicant shall
5 pay ten dollars for each one thousand stamps. The bed-
6 ding division shall register all applicants for stamps and
7 assign to every such person a registration number which
8 thereafter shall constitute his identification record and
9 said identification shall not be used by any other person.
10 The commissioner is hereby authorized to prepare and
11 cause to be printed adhesive stamps which shall contain
12 the replica of the seal of the state of West Virginia, the
13 registry number of the person applying therefor and such
14 other matter as the commissioner shall direct.

Sec. 15. *Enforcement.*—The commissioner of labor shall

2 have the power and duty, to:

3 (1) Create and organize a division of the Department

4 of Labor to be known as the "bedding division" for the
5 purpose of administering and enforcing the provisions of
6 this article; (2) appoint, remove and fix the compensa-
7 tion of the employees of the bedding division; (3) pre-
8 scribe uniform rules pertaining to and not in conflict with
9 the provisions of this article, to carry out the intent and
10 purpose of this article; (4) invoke any legal, equitable
11 or special remedy for the enforcement of orders of the
12 provisions of this chapter; (5) cooperate with other agen-
13 cies of the state of West Virginia for the purpose of secur-
14 ing laboratory analyses of the filling material used in
15 articles of bedding; (6) exercise any other power neces-
16 sary for the proper administration of the division of bed-
17 ding, and the enforcement of the provisions contained in
18 this article.

Sec. 16. *Disposition of Monies Collected By Bedding*
2 *Division; Creation of Bedding Division Fund.*—Disposi-
3 tion of fees, fines, penalties and other monies derived
4 from the operation of this article shall be paid to the bed-
5 ding division of the department of labor. The bedding
6 division shall, on receipt of same, forthwith pay over to

7 the state treasurer such money so received, accompanying
8 it with a statement showing in detail the sources of such
9 money and the purpose for which the same was originally
10 paid, and the same shall be credited forthwith to a fund
11 to be designated as the "Bedding Division fund". Such
12 money so paid and credited to the bedding division fund
13 shall be used and paid out upon the order of the commis-
14 sioner of labor solely for the administration and enforce-
15 ment of this article. If there be any unused portion of
16 said bedding division fund remaining unexpended or un-
17 drawn at the end of any fiscal year, a sum not exceeding
18 ten thousand dollars of such unused portion thereof shall
19 be carried over as a balance to the next fiscal year and
20 shall be used and paid out upon the order of the com-
21 missioner of labor, as herein provided, and the surplus
22 of said unused portion of the bedding division fund, over
23 and above the sum so carried over to the next fiscal
24 year, shall be paid by the commissioner of labor into the
25 general revenue fund.

Sec. 17. *Enforcement; Division of Bedding.*—Every

2 place where articles of bedding are made, remade or reno-

3 vated, or materials therefor are prepared or sterilized,
4 where such articles or materials are sold, shall be subject
5 to inspection by the commissioner or duly authorized
6 employee of the bedding division who shall have the
7 power to inspect the manufacture and sale or delivery of
8 all articles or materials covered by this article, to open
9 and examine the contents thereof and power to seize and
10 hold for evidence any article of bedding, in whole or in
11 part, which he has reason to believe is made or sold or
12 held in possession in violation of this article. No person
13 shall interfere with, obstruct or otherwise hinder the
14 commissioner or an employee of the bedding division in
15 the performance of his duties.

Sec. 18. *Offenses; Penalties.*—Any person who violates
2 a provision of this article shall be guilty of a misde-
3 meanor, and upon conviction thereof shall, for a first
4 offense, be fined not less than fifty dollars nor more than
5 five hundred dollars; for a second or subsequent offense,
6 shall be fined not less than one hundred dollars nor more
7 than one thousand dollars or imprisoned for not more
8 than thirty days, or both, such fine and imprisonment
9 to be within the discretion of the court.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

H. M. Kinley
Chairman Senate Committee

C. H. Mueller
Chairman House Committee

Originated in the Senate.

Takes effect ninety days from passage.

Howard Meyer
Clerk of the Senate

John P. Smith
Clerk of the House of Delegates

Ralph J. Bean
President of the Senate

W. B. Jennings
Speaker House of Delegates

The within approved this the 5th
day of March, 1953.

William C. Maland
Governor.

