

Article 4H.

Bedding.

§ 106-65.95. Definitions.

The following definitions shall apply throughout this Article:

- (1) "Bedding" means any mattress, upholstered spring, sleeping bag, pad, comforter, cushion, pillow, decorative pillow, and any other padded or stuffed item designed to be or commonly used for reclining or sleeping. This definition includes dual purpose furniture such as studio couches and sofa beds. The term "mattress" does not include water bed liners, bladders or cylinders unless they contain padding or stuffing. The term "mattress" also does not include quilts and comforters made principally by hand sewing or stitching in a home or community workshop.
- (2) "Itinerant vendor" means a person who sells bedding from a movable conveyance.
- (3) "Manufacture" means the making of bedding out of new materials.
- (4) "New material" means any material or article that has not been used for any other purpose and by-products of industry that have not been in human use.
- (5) "Previously used material" means any material of which previous use has been made, but manufacturing processes shall not be considered previous use.
- (6) "Renovate" means the reworking or remaking of used bedding or the making of bedding from previously used materials, except for the renovator's own personal use or the use of the renovator's immediate family.
- (7) "Sanitize" means treatment of secondhand bedding or previously used materials to be used in renovating for the destruction of pathogenic microorganisms and arthropods and the removal of dirt and filth.
- (8) "Secondhand bedding" means any bedding of which prior use has been made.
- (9) "Sell" or "sold" means sell, have to sell, give away in connection with a sale, delivery or consignment; or possess with intent to sell, deliver or consign in sale. (1937, c. 298, s. 1; 1957, c. 1357, s. 1; 1959, c. 619; 1965, c. 579, s. 1; 1983, c. 891, s. 2; 1987, c. 456, s. 1; 1991, c. 223, s. 1; 1993 (Reg. Sess., 1994), c. 647, s. 5; 2011-145, s. 13.3(v), (w).)

§ 106-65.96. Sanitizing.

(a) No person shall sell any renovated bedding or secondhand bedding unless it is sanitized in accordance with rules adopted by the Board of Agriculture.

(b) A sanitizing apparatus or process shall not be used for sanitizing bedding or material required to be sanitized under this Article until the apparatus is approved by the Department of Agriculture and Consumer Services.

(c) A person who sanitizes bedding shall attach to the bedding a yellow tag containing information required by the rules of the Board of Agriculture.

(d) A person who sanitizes material or bedding for another person shall keep a complete record of the kind of material and bedding which has been sanitized. The record shall be subject to inspection by the Department of Agriculture and Consumer Services.

(e) A person who receives used bedding for renovation or storage shall attach to the bedding a tag on which is legibly written the date of receipt and the name and address of the owner.

(1937, c. 298, s. 2; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2; 1987, c. 456, s. 2; 2011-145, s. 13.3(v), (x).)

§ 106-65.97. Manufacture regulated.

All materials used in the manufacture of bedding in this State or used in manufactured bedding to be sold in this State shall be free of toxic materials and shall be made from new materials. (1937, c. 298, s. 3; 1951, c. 929, s. 2; 1957, c. 1357, s. 1; 1959, c. 619; 1965, c. 579, s. 2; 1971, c. 371, ss. 1, 2; 1973, c. 476, s. 128; 1983, c. 891, s. 2; 2011-145, s. 13.3(v).)

§ 106-65.98. Storage of used materials.

No establishment shall store any unsanitized previously used materials in the same room with bedding or materials that are new or have been sanitized unless the new or sanitized bedding or materials are completely segregated from the unsanitized materials in a manner approved by the rules of the Board of Agriculture. (1937, c. 298, s. 3; 1951, c. 929, s. 2; 1957, c. 1357, s. 1; 1959, c. 619; 1965, c. 579, s. 2; 1971, c. 371, ss. 1, 2; 1973, c. 476, s. 128; 1983, c. 891, s. 2; 2011-145, s. 13.3(v), (y).)

§ 106-65.99. Tagging requirements.

(a) A tag of durable material approved by the Board of Agriculture shall be sewed securely to all bedding. The tag shall be at least two inches by three inches in size.

(b) The following shall be plainly stamped or printed upon the tag with ink in English:

- (1) The name and kind of material or materials used to fill the bedding which are listed in the order of their predominance;
- (2) A registration number obtained from the Department of Agriculture and Consumer Services; and
- (3) In letters at least one-eighth inch high the words "made of new material", if the bedding contains no previously used material; or the words "made of previously used materials", if the bedding contains any previously used material; or the word "secondhand" on any bedding which has been used but not remade.
- (4) Repealed by Session Laws 1987, c. 456, s. 4.

(c) A white tag shall be used for manufactured bedding and a yellow tag for renovated or sanitized bedding.

(d) The tag must be sewed to the outside covering before the filling material has been inserted. No trade name, advertisement nor any other wording shall appear on the tag. (1937, c. 298, ss. 2, 3; 1951, c. 929, s. 2; 1957, c. 1357, s. 1; 1959, c. 619; 1965, c. 579, s. 2; 1971, c. 371, ss. 1, 2; 1973, c. 476 s. 128; 1983, c. 891, s. 2; 1987, c. 456, ss. 3, 4; 2011-145, s. 13.3(v), (z).)

§ 106-65.100. Altering tags prohibited.

No person, other than one purchasing bedding for personal use or a representative of the Department of Agriculture and Consumer Services shall remove, deface or alter the tag required by this Article. (1937, c. 298, s. 4; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2; 2011-145, s. 13.3(v), (aa).)

§ 106-65.101. Selling regulated.

(a) No person shall sell any bedding in this State (whether manufactured within or without this State) which has not been manufactured, tagged, and labeled in the manner required by this Article and which does not otherwise comply with the provisions of this Article.

(b) This Article shall not apply to bedding sold by the owner and previous user from the owner's home directly to a purchaser for the purchaser's own personal use unless the bedding has been exposed to an infectious or communicable disease.

(c) Possession of any bedding in any store, warehouse, itinerant vendor's conveyance or place of business, other than a private home, hotel or other place where these articles are ordinarily used, shall constitute prima facie evidence that the item is possessed with intent to sell. No secondhand bedding shall be possessed with intent to sell for a period exceeding 60 days unless it has been sanitized. (1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2; 1987, c. 456, s. 5; 2011-145, s. 13.3(v), (bb).)

§ 106-65.102. Registration numbers.

All persons manufacturing or sanitizing bedding in this State or manufacturing bedding to be sold in this State shall apply for a registration number on a form prescribed by the Commissioner of Agriculture. Upon receipt of the completed application and applicable fees, the Department of Agriculture and Consumer Services shall issue to the applicant a certificate of registration showing the person's name and address, registration number and other pertinent information required by the rules of the Board of Agriculture. (1937, c. 298, s. 7; 1951, c. 929, s. 1; 1957, c. 1357, s. 1; 1959, c. 619; 1971, c. 371, s. 3; 1973, c. 476, s. 128; 1983, c. 891, s. 2; 1987, c. 456, s. 6; 2011-145, s. 13.3(v), (cc).)

§ 106-65.103. Payment of fees; licenses.

(a) The Department of Agriculture and Consumer Services shall administer and enforce this Article. A person who has done business in this State throughout the preceding calendar year shall obtain a license by paying a fee to the Department of Agriculture and Consumer Services in an amount determined by the total number of bedding units manufactured, sold, or sanitized in this State by the applicant during the calendar year immediately preceding, at the rate of five and two tenths cents (5.2¢) per bedding unit. However, if this amount is less than fifty dollars (\$50.00), a minimum fee of fifty dollars (\$50.00) shall be paid to the Department of Agriculture and Consumer Services.

(b) A person who has not done business in this State throughout the preceding calendar year shall obtain a license by paying an initial fee to the Department of Agriculture and Consumer Services in the amount of seven hundred twenty dollars (\$720.00) for the first year in which business is done in this State, prorated in accordance with the quarter of the calendar year in which the person begins doing business. After submission of proof of business volume in accordance with subsection (h) of this section for the part of the preceding calendar year in which the person did business in this State, the Department of Agriculture and Consumer Services shall determine the amount of fee for which the person is responsible for that time period by using a rate of five and two tenths cents (5.2¢) for each bedding unit. However, if this amount is less than fifty dollars (\$50.00), then the amount of the fee for which the person is responsible shall be fifty dollars (\$50.00). If the person's initial payment is more than the amount of the fee for which the person is responsible, the Department of Agriculture and Consumer Services shall make a refund or

adjustment to the cost of the fee due for the next year in the amount of the difference. If the initial payment is less than the amount of the fee for which the person is responsible, the person shall pay the difference to the Department of Agriculture and Consumer Services.

(c) Payments, refunds, and adjustments shall be made in accordance with rules adopted by the Board of Agriculture.

(d) Upon payment of the fees charged pursuant to subsections (c) and (d), or the first installment thereof as provided by rules adopted by the Board of Agriculture, the Department of Agriculture and Consumer Services shall issue a license to the person. Licenses shall be kept conspicuously posted in the place of business of the licensee at all times. The Commissioner of Agriculture may suspend a license for a maximum of six months for two or more serious violations of this Article or of the rules of the Board of Agriculture within any 12-month period.

(e) A maximum fee of seven hundred fifty dollars (\$750.00) shall be charged for units of bedding manufactured in this State but not sold in this State.

(f) For the sole purpose of computing fees for which a person is responsible, the following definitions shall apply: One mattress is defined as one bedding unit; one upholstered spring is defined as one bedding unit; one pad is defined as one bedding unit; one sleeping bag is defined as one bedding unit; five comforters, pillows or decorative pillows are defined as one bedding unit; and any other item is defined as one bedding unit.

(g) An application for license must be submitted on a form prescribed by the Commissioner of Agriculture. No license may be issued to a person unless the person complies with the rules of the Board of Agriculture governing the granting of licenses.

(h) The Board of Agriculture shall adopt rules for the proper enforcement of this section. The rules shall include provisions governing the type and amount of proof which must be submitted by the applicant to the Department of Agriculture and Consumer Services in order to establish the number of bedding units that were, during the preceding calendar year:

- (1) Manufactured and sold in this State;
- (2) Manufactured outside of this State and sold in this State; and
- (3) Manufactured in this State but not sold in this State.

(i) The Board of Agriculture may provide in its rules for additional proof of the number of bedding units sold during the preceding calendar year when it has reason to believe that the proof submitted by the manufacturer is incomplete, misleading or incorrect. (1937, c. 298, s. 5; 1949, c. 636; 1957, c. 1357, s. 1; 1965, c. 579, s. 3; 1967, c. 771; 1971, c. 371, ss. 4-7; 1973, s. 476, s. 128; 1983, c. 891, s. 2; 1987, c. 456, s. 7; 2011-145, s. 13.3(v), (dd).)

§ 106-65.104. Bedding Law Account.

The Bedding Law Account is established as a nonreverting account within the Department of Agriculture and Consumer Services. All fees collected under this Article shall be credited to the Account and applied to the following costs:

- (1) Salaries and expenses of inspectors and other employees who enforce this Article.
- (2) Expenses directly connected with the enforcement of this Article, including attorney's fees, which are expressly authorized to be incurred by the Commissioner of Agriculture without authority from any other source when in the opinion of the Commissioner of Agriculture it is advisable to employ an attorney to prosecute any persons. (1937, c. 298, s. 5; 1949, c. 636; 1957, c. 1357, s. 1; 1965, c. 579, s. 3; 1967, c. 771; 1971, c. 371, ss. 4-7; 1973, c. 476,

s. 128; 1983, c. 891, s. 2; c. 913, s. 23; 1991 (Reg. Sess., 1992), c. 1039, s. 20.2; 2011-145, s. 13.3(v), (ee).)

§ 106-65.105. Enforcement by the Department of Agriculture and Consumer Services.

(a) The Department of Agriculture and Consumer Services shall enforce the provisions of this Article and the rules adopted by the Board of Agriculture.

(b) The Commissioner of Agriculture may prohibit sale and place an "off sale" tag on any bedding which is not made, sanitized, or tagged as required by this Article and the rules of the Board of Agriculture. The bedding shall not be sold or otherwise removed until the violation is remedied and the Commissioner of Agriculture has reinspected it and removed the "off sale" tag.

(c) A person supplying material to a bedding manufacturer shall furnish an itemized invoice of all furnished material. Each material entering into willowed or other mixtures shall be shown on the invoice. The bedding manufacturer shall keep the invoice on file for one year subject to inspection by the Department of Agriculture and Consumer Services.

(d) When the Commissioner of Agriculture has reason to believe that bedding is not tagged or filled as required by this Article, the Commissioner of Agriculture shall have authority to open a seam of the bedding to examine the filling, and, if unable after this examination to determine if the filling is of the kind stated on the tag, shall have the authority to examine purchase or other records necessary to determine definitely the kind of material used in the bedding. The Commissioner of Agriculture shall have authority to seize and hold for evidence any records and any bedding or bedding material which in the opinion of the Commissioner of Agriculture is made, possessed or offered for sale in violation of this Article or the rules of the Board of Agriculture. The Commissioner of Agriculture shall have authority to take a sample of any bedding or bedding material for the purpose of examination or for evidence.

(e) The Commissioner of Agriculture shall have the right of entry upon the premises of any place where entry is necessary to enforce the provisions of this Article or the rules adopted by the Board of Agriculture. If consent for entry is not obtained, an administrative search and inspection warrant shall be obtained pursuant to G.S. 15-27.2. (1937, c. 298, s. 6; 1957, c. 1357, s. 1; 1971, c. 371, s. 8; 1973, c. 476, s. 128; 1983, c. 891, s. 2; 1987, c. 456, s. 8; 2011-145, s. 13.3(v), (ff); 2013-155, s. 25.)

§ 106-65.105A. Detention or embargo of product or item suspected of being adulterated or misbranded.

(a) If an authorized agent of the Department of Agriculture and Consumer Services finds or has probable cause to believe that any bedding, secondhand bedding, material, or other item regulated under this Article is unsanitary, mislabeled, unsafe for its intended use, a danger to the public, or is otherwise in violation of the requirements of this Article, the agent may affix to the item a tag or other appropriate marking giving notice that the item has been detained or embargoed with information identifying the violation(s). It shall be a violation of this Article for any person to remove or alter a tag authorized by this subsection, or to remove or dispose of a detained or embargoed item by sale or otherwise, without such permission, and the tag or marking shall include a warning to that effect.

(b) When an item is detained or embargoed under subsection (a) of this section, an authorized agent of the Department of Agriculture and Consumer Services may petition a judge of the district or superior court in whose jurisdiction the item is detained or embargoed for an order

for condemnation of the item. When an authorized agent has found that an item detained or embargoed is not unsanitary, mislabeled, unsafe for its intended use, a danger to the public, or otherwise in violation of the requirements of this Article, the agent shall remove the tag or other marking.

(c) If the court finds that a detained or embargoed item is unsanitary, mislabeled, or contains toxic materials, the item shall, after entry of the decree, be destroyed at the expense of the item's claimant, under the supervision of an authorized agent of the Department of Agriculture and Consumer Services; and all court costs and fees, storage, and other proper expenses shall be levied against the claimant of the item or the claimant's agent; provided, that when the unsanitary condition, mislabeling, safety concerns, or other violation can be corrected by proper labeling or processing of the item, the court, after entry of the decree and after costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that the item shall be properly labeled or processed, has been executed, may by order direct that the item be delivered to the item's claimant for proper labeling or processing under the supervision of an agent of the Department of Agriculture and Consumer Services. The expense of the Department's supervision shall be paid by the claimant. The amount of any bond paid shall be returned to the claimant of the item on representation to the court by the Department of Agriculture and Consumer Services that the item is no longer in violation of this Article and that the expenses of the Department's supervision have been paid. (2016-113, s. 1(a).)

§ 106-65.105B. Injunctions restraining violations.

In addition to any other remedies provided by this Article, the Commissioner is authorized to apply to the superior court for, and the court shall have jurisdiction upon hearing and for cause shown to grant, a temporary or permanent injunction restraining any person from violating any provision of this Article or any rule promulgated thereunder, irrespective of whether or not there exists an adequate remedy at law. (2016-113, s. 1(a).)

§ 106-65.105C. Civil penalties.

(a) The Commissioner may assess a civil penalty of not more than two thousand five hundred dollars (\$2,500) per violation against any person, firm, or corporation that violates or directly causes a violation of any provision of this Article, rules, regulations, or standards promulgated thereunder, or lawful order of the Commissioner. In addition, if any person continues to violate or further violates any provision of this Article after written notice from the Commissioner, the Commissioner may determine that each day during which the violation continued or is repeated constitutes a separate violation subject to additional civil penalties. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused or potentially caused by the violation.

(b) Prior to assessing a civil penalty, the Commissioner shall give the person written notice of the violation and a reasonable period of time in which to correct the violation. However, the Commissioner shall not be required to give a person time to correct a violation before assessing a penalty if the Commissioner determines the violation has the potential to cause physical injury or illness.

(c) The Commissioner may consider the training and management practices implemented by the person, firm, or corporation for the purpose of complying with this Article as a mitigating factor when determining the amount of the civil penalty.

(d) The Commissioner shall remit the clear proceeds of civil penalties assessed pursuant to this section to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (2016-113, s. 1(a).)

§ 106-65.105D. Violation a misdemeanor.

(a) Except as otherwise provided, any person, firm, or corporation that violates any of the provisions of this Article, or any of the rules, regulations, or standards promulgated hereunder, shall be deemed guilty of a Class 2 misdemeanor.

(b) Any person, firm, or corporation that provides the Commissioner or a duly authorized agent of the Commissioner with false or misleading information in relation to a license application or renewal, inspection, or investigation authorized by this Article shall be deemed guilty of a Class 2 misdemeanor.

(c) Any person, firm, or corporation that alters or removes a tag indicating that an item has been detained or embargoed pursuant to G.S. 106-65.105A(a) without first receiving permission from the court or a duly authorized agent under this Article shall be deemed guilty of a Class 2 misdemeanor.

(d) Any person, firm, or corporation that removes or disposes of any item detained or embargoed under G.S. 106-65.105A(a) without first receiving permission from the court or a duly authorized agent under this Article shall be deemed guilty of a Class 2 misdemeanor.

(e) Any person who willfully resists, opposes, impedes, intimidates, or interferes with any duly authorized agent while engaged in or on account of the performance of the duly authorized agent's official duties under this Article shall be guilty of a Class 2 misdemeanor. Whoever, in the commission of any such acts, uses a deadly weapon shall be guilty of a Class 1 misdemeanor.

(f) If any person continues to violate or further violates any provision of this Article after receiving written notice from the Commissioner, the court may determine that each day during which the violation continued or is repeated constitutes a separate violation. (2016-113, s. 1(a).)

§ 106-65.105E. Report of minor violations in discretion of Commissioner.

Nothing in this Article shall be construed to require the Commissioner to initiate, or attempt to initiate, any criminal or administrative proceedings under this Article for minor violations of this Article whenever the Commissioner believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning. (2016-113, s. 1(a).)

§ 106-65.106. Exemptions for blind persons and State institutions.

(a) In cases where bedding is manufactured, sanitized or renovated in a plant or place of business which has qualified as a nonprofit agency for the blind or severely handicapped under P.L. 92-28, as amended, the responsible person shall satisfy the provisions of this Article and the rules of the Board of Agriculture. However, the responsible persons at these plants or places of business shall not be required to pay fees in accordance with G.S. 106-65.103.

(b) State institutions engaged in the manufacture, renovation or sanitizing of bedding for their own use or that of another State institution are exempted from all provisions of this Article. (1937, c. 298, s. 11; 1957, c. 1357, s. 1; 1971, c. 371, s. 9; 1983, c. 891, s. 2; 1987, c. 456, s. 9; 2011-145, s. 13.3(v), (gg).)

§ 106-65.107. Rules.

The Board shall adopt rules required by this Article in order to protect the public health. (1983, c. 891, s. 2; 2011-145, s. 13.3(v), (hh).)