

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

HOUSE BILL NO. 2652

By: Settle

AS INTRODUCED

An Act relating to public health and safety; creating the Oklahoma Bedding Regulation Act; providing for application of act; specifying exceptions; providing terms; making certain actions unlawful; providing for promulgation of rules by the State Board of Health; specifying content; authorizing certain tagging for unlawful bedding; providing for notice, embargo, detaining and warnings; prohibiting certain removal and disposal; providing procedures; providing for final determinations; providing for lifting of embargo; providing for petitions; authorizing appeals; providing for destruction, costs and fees; authorizing corrective actions; providing for payment of certain expenses; authorizing bonds; requiring certain permits; providing for fees; requiring sanitization of certain bedding prior to sale; authorizing exceptions; requiring registration of sanitization process; requiring posting of permit; requiring maintenance of records; providing for content; providing for inspections; authorizing certain penalties for violations; specifying authority and powers of Commissioner or agent; repealing 63 O.S. 1991, Sections 1-1001, 1-1002, 1-1003, 1-1004, 1-

1005, 1-1006, 1-1007 and 1-1008, which relate to bedding and bedding materials; providing for codification; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1001.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Bedding Regulation Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1001.2 of Title 63, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Bedding Regulation Act shall apply to all persons engaged in the business of manufacturing, repairing, renovating, germicidally treating, leasing, selling or offering to sell items of bedding. The Oklahoma Bedding Regulation Act does not apply to individuals who make, repair, renovate, and germicidally treat bedding for their own personal use.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1001.3 of Title 63, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Bedding Regulation Act:

1. "Bedding" means any mattress, upholstered spring, sleeping bag, pad, comforter, cushion, pillow, decorative pillow and any other item used principally for sleeping. The term bedding also includes dual purpose furniture such as studio couches, futons and sofa beds;

2. "Mattress" includes padding or cushioning material which is used in conjunction with water bed liners, bladders or cylinders but does not include water bed liners, bladders or cylinders;

3. "Itinerant vendor" means a person who sells bedding from a movable conveyance;

4. "Manufacture" means the making of bedding out of new or recycled materials;

5. "New material" means any material or article that has not been used for any other purpose;

6. "Previously used material" means any material which previously has been used for any purpose other than for the manufacturer of bedding;

7. "Recycled material" means materials which have previously been used for purposes other than as a component of bedding or bedding materials, and which can be used, after processing, for bedding materials. Such processing shall result in a sanitary material which can be used safely as a bedding material without the germicidal treatment used for secondhand materials. Properly recycled materials shall be considered new materials;

8. "Renovate" means the reworking or remaking of used bedding or the making of bedding from previously used materials;

9. "Sanitize" means germicidal 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;

10. "Secondhand bedding" means any bedding of which prior use has been made as bedding;

11. "Sell" or "sold" means to sell, offer to sell, give away in connection with a sale, a sale's promotion or sale by consignment; or possess with intent to sell, deliver or consign in sale; and

12. "Commissioner" means the Commissioner of Health.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1001.4 of Title 63, unless there is created a duplication in numbering, reads as follows:

It shall be unlawful to:

1. Sell, lease, manufacture, renovate or repair bedding without the proper permit from the Commissioner;

2. Manufacture, sell or deliver, lease, hold or offer for sale any bedding or bedding material unless it is labeled in accordance with rules promulgated pursuant to the provisions of the Oklahoma Bedding Regulation Act;

3. Alter, mutilate, destroy, obliterate, or remove the whole or any part of the labeling of, or the doing of any other act with respect to, bedding or bedding materials, if such act is done while such article is held for sale and results in such article being mislabeled or unlabeled;

4. Distribute or knowingly receive in commerce any bedding, or bedding material, that is mislabeled, unlabeled or has been manufactured, renovated, held or transported under unsanitary conditions;

5. Disseminate any false or misleading advertisement;

6. Refuse to permit entry or inspection, or to permit the taking of a sample, as authorized by Section 8 of this act;

7. Remove or dispose of a detained or embargoed article in violation of Section 5 of this act;

8. Forge, counterfeit, simulate, or falsely represent, or without proper authority use any mark, stamp, tag, label, or other identification device authorized or required by rules promulgated under the provisions of the Oklahoma Bedding Regulation Act;

9. Sell or lease any renovated bedding or secondhand bedding, or any portions thereof, unless it is sanitized and labeled in accordance with rules promulgated pursuant to the provisions of the Oklahoma Bedding Regulation Act;

10. Renovate into bedding or bedding material any discarded materials obtained from dump grounds, junk yards, or hospitals within or without the State of Oklahoma; and

11. Remove or dispose of any detained or embargoed article by sale or otherwise without such permission.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1001.5 of Title 63, unless there is created a duplication in numbering, reads as follows:

The State Board of Health shall promulgate rules for:

1. Examinations of bedding manufactured, renovated, held, leased, sold or offered for sale in Oklahoma;

2. The disposal of bedding determined to be unsafe for human use;

3. The label requirements on bedding and bedding materials;

4. The sanitation of renovated or secondhand bedding, or bedding materials;

5. The sanitation standards for facilities or vehicles where bedding or bedding materials are manufactured, renovated, held, leased, transported, sold or offered for sale in Oklahoma;

6. The defining of categories and limitations of bedding permits;

7. The establishment of an annual permit fee;

8. Reporting requirements which may include bedding article registration fees;

9. The procedure to apply for or renew a bedding permit; and

10. Prescribing means, methods and practices to implement the provisions of the Oklahoma Bedding Regulation Act.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1001.6 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Whenever a duly authorized agent of the Commissioner finds, or has probable cause to believe, that any bedding or bedding

material is in an unsanitary condition, mislabeled, or unlabeled within the meaning of the Oklahoma Bedding Regulation Act, or any rule promulgated pursuant thereto, such agent shall, upon approval and authorization of the Commissioner, affix to such bedding or bedding material a tag or other appropriate marking, giving notice that such article is or is suspected of being unsanitary, mislabeled or unlabeled and has been detained or embargoed, and warning all persons not to remove or dispose of such bedding article by sale or otherwise until permission for removal or disposal is given by such agent or the court.

B. 1. The Commissioner shall have twenty (20) days from the time an article is embargoed in which to make a final determination as to its unsanitary condition or improper labeling. Failure to find the article to be in an unsanitary condition, mislabeled or unlabeled within such time shall result in the embargo being lifted. When such agent has found that an article so detained or embargoed is not in an unsanitary condition or mislabeled, such agent shall remove the tag or other marking.

2. When the Commissioner has found an article to be in an unsanitary condition, mislabeled or unlabeled as provided herein, the Commissioner shall immediately petition the district court in whose jurisdiction the article is detained or embargoed for condemnation of such article. The filing of a petition shall continue the embargo period until further order of the court.

3. Any person whose interest is affected adversely by an embargo imposed under the terms of the Oklahoma Bedding Regulation Act may appeal directly from a determination of the Commissioner to the district court in whose jurisdiction the article is embargoed, and a trial de novo shall be had in such court on the question of the article's unsanitary condition or improper labeling.

C. 1. Except as otherwise provided by this subsection, if the court finds that a detained or embargoed article is in an unsanitary

condition, mislabeled or unlabeled, such article shall, after entry of the decree, be destroyed at the expense of the claimant thereof, under the supervision of such agent, and all court costs and fees, the costs of the supervision by such agent, and storage and other proper expenses shall be taxed against the claimant of such article or his agent.

2. If the unsanitary, mislabeled or unlabeled bedding or bedding materials can be corrected by an approved sanitization process or proper labeling of the article, the court, after entry of the decree and after such costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that such article shall be so labeled or processed, has been executed, may by order direct that such article be delivered to the claimant thereof for such labeling or processing under the supervision of an agent of the Commissioner.

3. The expense of such supervision shall be paid by the claimant. Such bond shall be returned to the claimant of the article on representation to the district court by the Commissioner that the article is no longer in violation of the Oklahoma Bedding Regulation Act, or any rule promulgated pursuant to the provisions of the Oklahoma Bedding Regulation Act, and that the expenses of such supervision have been paid.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1001.7 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Each person engaged in the business of selling, leasing, manufacturing, renovating or repairing any bedding shall have obtained an annual permit from the Commissioner to sell or lease bedding, or an annual permit from the Commissioner to manufacture, renovate or repair bedding. Each person shall pay for such permit a fee to be fixed by the State Board of Health. Unless otherwise

provided by rule by the Board, each such permit shall expire on the 30th day of June following its issuance.

B. Each person who sells renovated or secondhand bedding or bedding materials on a consignment basis as an auctioneer, itinerant vendor or broker shall obtain a permit under subsection A of this section. The renovated or secondhand bedding or bedding materials shall be sanitized by a person who holds a permit pursuant to subsection C of this section before it is sold to the public. The provisions of this section shall not apply to an individual for the sale of bedding owned and used by such individual and his immediate family at private auction or private sale conducted by such individual at the individual's residence.

C. 1. No person shall be considered to have qualified to apply an acceptable sanitization process until such process has been registered with the Commissioner and determined to be in compliance with the rules, after which a permit shall then be issued by the Commissioner which indicates an approved sanitization process. Every person to whom a permit has been issued shall keep such permit conspicuously posted on the premises of his place of business.

2. Holders of permits to apply a sanitization process shall be required to keep an accurate record of all materials which have been subjected to a sanitization process, including the source of the material, the date of treatment, the type and time of treatment, and the label identification number, and such records shall be available for inspection at any reasonable time by authorized representatives of the Commissioner. Such records shall be maintained for a period of time to be adopted by rule by the Board.

D. Pursuant to the Oklahoma Administrative Procedures Act:

1. The Commissioner shall suspend or revoke or may refuse to issue or renew any permit issued in accordance with the Oklahoma Bedding Regulation Act upon proof of violation of any of the



provisions of the Oklahoma Bedding Regulation Act, or any rule promulgated thereto; and

2. Any person whose permit has been revoked shall be ineligible for a bedding permit for one (1) year. An application for a permit to sell, lease, manufacture, repair or renovate bedding or bedding material by such person following the one-year revocation shall be subject to provisions as set forth in an initial permit.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1001.8 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The Commissioner or duly authorized agent shall have access at all reasonable hours to any factory, warehouse, wholesale or retail establishment in which bedding or bedding material is manufactured, processed, packed, sold, leased or held for introduction into commerce, or to enter any vehicle being used to transport, sell, lease or hold such bedding or bedding material in commerce, for the purpose:

1. Of inspecting such factory, warehouse, establishment, or vehicle to determine if any of the provisions of this article are being violated; and

2. To secure samples or specimens of any bedding or bedding material after paying or offering to pay for such sample.

B. It shall be the duty of the Commissioner to make or cause to be made examination of samples secured under the provisions of this section to determine whether or not any provision of the Oklahoma Bedding Regulation Act, or any rule promulgated under the provisions of the Oklahoma Bedding Regulation Act, is being violated.

SECTION 9. REPEALER 63 O.S. 1991, Sections 1-1001, 1-1002, 1-1003, 1-1004, 1-1005, 1-1006, 1-1007 and 1-1008, are hereby repealed.

SECTION 10. This act shall become effective July 1, 1994.

SECTION 11. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

44-2-7708

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