



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-
MAKING REVIEW COMMITTEE**

AGENCY: Labor TITLE-SERIES: 42-12
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: Bedding and Upholstered Furniture

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: W. Va. Code §47-1A-15

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

W. Va. Code §47-1A-15(3) gives the Division of Labor Commissioner broad authority to promulgate rules as are necessary and appropriate to carry out the purposes of the Bedding and Upholstery Businesses Act.

Consistent with this broad authority, the proposed rule includes the following: a definition section; a section incorporating the International Association of Bedding and Furniture Law Officials "Classification of Filling Materials;" a section on the required registration of manufacturers and sellers of articles of bedding; a section on the application for a registration certificate and fees; a section on sterilization permits for sterilizers or articles of bedding; a section on the application for a sterilization permit and fees; a section on the issuance of a registration or permit number; a section on the requirements for law labels or tags; and an appendix with examples of the required law labels or tags.

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/19/2018

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/19/2018

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

N/A

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

See statutory authority explanation above and statement of circumstances explanation below.

With the passage of HB 4350 during the 2018 Regular Legislative Session, the proposed rule has been amended by eliminating the references to renovators and upholsterers in several definitions, by eliminating the requirements that renovators or upholsterers be registered annually with the Division, and by eliminating the law label example in former Appendix C with respect to the renovation of bedding or upholstered furniture for a specific owner.

Some technical modifications have also been made.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

HB 4350, passed during the 2018 Regular Legislative Session, amended the Regulation and Control of Bedding and Upholstery Businesses Act by eliminating the requirements for a renovator or an upholsterer to register annually with the Division.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

The proposed legislative rule will not have an economic impact on the revenues of state government.

HB 4350, passed during the 2018 Regular Legislative Session, amended the Regulation and Control of Bedding and Upholstery Businesses Act by eliminating the requirements for a renovator or upholsterer to register annually with the Division.

Prior to the passage of HB 4350, 18 individuals were registered as renovators or upholsterers, with the annual \$90 registration fee set by statute.

Consequently, with the statutory amendment, the Division estimates that it will lose \$1,620.00 in revenue in FY 2019.

B. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

The proposed legislative rule will not have an economic impact on the State.

Prior to the passage of HB 4350, 18 individuals were registered as renovators or upholsterers. For those state residents that were registered as upholsterers or renovators, they no longer have to register with the Division or pay the \$90 annual registration fee.

C. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2018 Increase/Decrease (use "-")	2019 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	- \$1620

D. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

N/A

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Elizabeth Farber -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

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TITLE 42
LEGISLATIVE RULE
DIVISION OF LABOR

SERIES 12
BEDDING AND UPHOLSTERED FURNITURE

§42-12-1. General.

1.1. Scope. -- This rule is for the enforcement of all matters concerning the regulation of bedding and upholstered furniture pursuant to W. Va. Code §47-1A-1 *et seq.*

1.2. Authority. -- W. Va. Code §47-1A-15.

1.3. Filing Date. -- ~~March 23, 2018.~~

1.4. Effective Date. -- ~~March 30, 2018.~~

1.5. Sunset Date. -- This rule shall terminate and have no further force or effect ~~on March 30, 2028.~~
upon the expiration of 10 years from its effective date.

§42-12-2. Application and Enforcement.

2.1. Application. This rule applies to all persons governed or otherwise within the purview of the Regulation and Control of Bedding and Upholstery Businesses Act, W. Va. Code §47-1A-1 *et seq.*

2.2. Enforcement. The enforcement of this rule is vested with the West Virginia Division of Labor.

§42-12-3. Definitions.

3.1. The "Act" for purposes of this rule, means the Regulation and Control of Bedding and Upholstery Businesses Act, W. Va. Code §47-1A-1 *et seq.*

3.2. "Antique," as used in W. Va. Code §47-1A-11, means a product that is at least 75 years old.

3.3. "As is," as used in W. Va. Code §47-1A-11, means the condition of an intact, complete secondhand article of bedding that has not been remade or renovated in any way.

3.4. "Commissioner" means the Commissioner of the Division of Labor or his or her authorized representatives.

3.5. "Complete application" means an application that includes all the information required in sections 6 and 8 of this rule.

3.6. "Contested application" means an application that the Commissioner challenges, which can include, but is not limited to, incomplete information.

3.7. "Division" means the West Virginia Division of Labor.

3.8. "Fill material" or "filling material" means any material used in the manufacture or renovation of articles of bedding or upholstered furniture, including cotton, wool, kapok, feathers, down, hair or any other material or combination of materials.

3.9. "Final action" means the issuance or denial of an application for a permit.

3.10. "IABFLO" refers to the International Association of Bedding and Furniture Law Officials, <http://abflo.info/index.htm>.

3.11. "Manufacturer" or "maker" means a person that alters, repairs, finishes, makes, or produces articles of bedding, upholstered furniture, or filling material, using either new or secondhand materials, for sale to the general public.

3.12. "Person" means an individual, a partnership, an association, a business, an auctioneer, a trust, a corporation, or any other entity engaged in the manufacturing, selling, ~~renovating, upholstering~~ or sterilizing of any article of bedding, upholstered furniture, or filling material.

3.13. "Registration certificate" means the annual registration document issued by the Commissioner authorizing a manufacturer, ~~upholsterer or renovator~~ seller, or vendor to ship or sell articles of bedding in West Virginia.

3.14. "Registration number" or "registry number" means the unique number assigned by the Division to an applicant for a registration certificate, or a uniform registry number assigned to an applicant by another State.

~~3.15. "Renovator" means a person who repairs, remakes, rebuilds, recovers, restores, renovates or renews any article of bedding or upholstered furniture.~~

~~3.16. "Sell" means to offer or expose for sale, barter, trade, deliver, give away, rent, consign, lease, possess with an intent to sell, or dispose of in any commercial manner.~~

3.15. "Seller" or "vendor" means a person who sells articles of bedding to the general public.

~~3.17.~~ 3.16. "Sterilization permit" means the annual permit issued by the Commissioner.

~~3.18.~~ 3.17. "Sterilizer" means a person who sterilizes articles of bedding, upholstered furniture or filling material.

~~3.19.~~ 3.18. "Tag," "label," or "law label" means the tag or label required by W. Va. Code §47-1A-11 to be affixed to articles of bedding or upholstered furniture.

~~3.20.~~ 3.19. "Uniform Registry Number" or "URN" means the unique number accepted by all states in the United States that allows the use of one state's registration number for use on any other state's law labels or tags, as long as the state assigning the registration number regulates bedding.

~~3.21. "Upholstered furniture" means any article of furniture intended for human use for sitting, resting or reclining that is wholly or partially stuffed or filled with filling material, including outdoor furniture pads.~~

~~3.22. "Upholsterer" means a person who manufactures upholstered furniture.~~

§42-12-4. Adoption of IABFLO's Standardized Classification of Filling Materials and Uniform Law Labels.

~~The following documents are adopted and incorporated by reference:~~

~~4.1. IABFLO's "Classification of Filling Materials" is adopted and incorporated by reference. ; and~~

~~4.2. IABFLO's "Uniform Law Labels."~~

§42-12-5. Registration Certificate Required; Validity.

5.1. Before manufacturing or selling ~~, renovating, or upholstering~~ any article of bedding, ~~upholstered furniture or filling material~~ for shipment into or for sale or rental in this State, a manufacturer, ~~renovator or upholsterer~~ seller or vendor shall submit a complete application for a registration certificate to the Commissioner on a form provided by the Division.

5.2. A registration certificate expires annually on June 30.

5.3. A registration certificate is valid for the business location and name as stated on the certificate, and is not valid if transferred or assigned to any other business location or name.

§42-12-6. Initial and Renewal Application for a Registration Certificate; Fees.

6.1. A manufacturer, ~~renovator or upholsterer~~ seller, or vendor shall submit a separate application for a registration certificate for each business location or name.

6.2. An applicant for an initial or renewal manufacturer, ~~renovator or upholsterer~~ seller, or vendor registration certificate shall include a \$90.00 fee for each business location or name in United States currency.

6.2.a. If the applicant submits the fee by check, the check shall be drawn on a bank that has a banking charter or license issued by a state in the United States or is chartered by the Office of the Comptroller of the Currency.

6.2.b. If the applicant submits the fee by check drawn on a bank not chartered or licensed by a state in the United States or not chartered by the Office of the Comptroller of the Currency, the Commissioner shall refuse the check and return it to the applicant.

6.2.c. A person who is both a manufacturer and a seller or vendor shall pay a single \$90.00 registration fee.

6.3. The preferred method for payment of a renewal application fee is by credit card.

6.4. An applicant for an initial manufacturer's registration certification shall include 2 original tags or labels intended for use with an article of bedding, upholstered furniture or filling material.

6.4.a. An applicant may submit a template for approval by the Commissioner prior to having the tags or labels printed.

6.4.b. Before issuing a registration certificate, the Commissioner shall approve the applicant's tag or label for use.

6.5. The Division shall mail annual renewal applications to current certificate holders at their last known registered address no later than April 15.

§42-12-7. Sterilization Permit Required; Posting of the Permit.

7.1. Before sterilizing any article of bedding, upholstered furniture or filling material for shipment into, or for sale or rental in this State, a sterilizer shall submit a complete application for a sterilization permit to the Commissioner on a form provided by the Division.

7.2. A sterilization permit expires annually on June 30.

7.3. A sterilization permit is valid for the business location and name as stated on the permit, and is not valid if transferred or assigned to any other business location or name.

7.4. The sterilizer shall ensure that the sterilization permit is conspicuously posted near the sterilizing equipment.

§42-12-8. Initial and Renewal Application for a Sterilization Permit; Fees.

8.1. A sterilizer shall submit a separate application for a sterilization permit for each business location or name.

8.2. An applicant for an initial or renewal sterilization permit shall include a \$90.00 fee for each business location or name in United States currency. The preferred method for payment of the application fee is by credit card.

8.2.a. If the applicant submits the fee by check, the check shall be drawn on a bank that has a banking charter or license issued by a state in the United States or is chartered by the Office of the Comptroller of the Currency.

8.2.b. If the applicant submits the fee by check drawn on a bank not chartered or licensed by a state in the United States or not chartered by the Office of the Comptroller of the Currency, the Commissioner shall refuse the check and return it to the applicant.

8.3. An applicant for an initial sterilization permit shall include a complete description of its sterilization process and procedures, including identification of the types of items to be sterilized and the names of the chemicals to be used.

8.4. An applicant for a renewal sterilization permit shall include a description of any changes to its previously approved sterilization process.

8.5. Before issuing a sterilization permit, the Commissioner shall approve the proposed sterilization process. If the Commissioner does not approve the sterilization process, he or she shall provide the applicant with a written explanation for the disapproval.

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8.6. The Division shall mail annual renewal applications to current permit holders at their last known registered address no later than April 15.

8.7. Upon receipt of a complete application, the Commissioner shall issue a sterilization permit within 30 days if the application is uncontested.

8.8. If the application is contested by the Commissioner, he or she shall have 90 days to take final action on the application.

8.8.a. The Commissioner shall promptly notify the applicant in writing, either by email or certified mail, return receipt requested, of the reasons for contesting the application and afford the applicant the opportunity to respond.

8.8.b. If, after notice, the applicant fails to respond to the Commissioner's objections, the Commissioner shall deny the application.

§42-12-9. Issuance of a Registration or Permit Number.

9.1. Upon receipt of complete application for a registration certificate or sterilization permit, the Division shall assign a registration or permit number to the applicant, or shall use the applicant's uniform registry number, if one is available.

9.2. The Division shall assign or use a unique registration or sterilization number for each business name or location.

9.3. A manufacturer, ~~renovator, upholsterer~~ or sterilizer shall use either the registration or permit number assigned by the Division or the uniform registry number on all labels or tags required by the Act or this rule.

§42-12-10. Tags or Labels Required; Information Required.

10.1. "All New Material" white tag or label.

10.1.a. A manufacturer, seller, or vendor shall ensure that a white tag or label is properly attached to an article of bedding, upholstered furniture or filling material that contains all new material, and that the white tag or label conforms to the provisions of W. Va. Code §§47-A-11 and -12.

10.1.b. When the bedding, upholstered furniture or filling material does not require sterilizing, the "All New Material" white tag or label shall conform to either the sample tag in Appendix A of this rule or the tag as recommended by IABFLO .

10.2. "Secondhand or Renovated ~~material~~ Material" yellow tag or label.

10.2.a. A ~~renovator, upholsterer or sterilizer~~ manufacturer, seller, or vendor shall ensure that a yellow tag or label is properly attached to an article of bedding, upholstered furniture or filling material that contains secondhand material, and that the yellow tag or label conforms to the provisions of W. Va. Code §§47-1A-11 and -12.

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10.2.b. When the second-hand bedding or upholstered furniture has been renovated or otherwise remade and has been sterilized, the ~~“Secondhand or Renovated or Remade Material - Sterilized”~~ light yellow tag or label shall conform to the sample tag in Appendix B of this rule.

~~10.2.c. When the second-hand bedding or upholstered furniture has been renovated or otherwise remade for a specific owner and not for sale to the general public, the “Renovated or Remade for Specific Owner - Not To Be Sold” light yellow tag or label shall conform to the sample tag in Appendix C of this rule.~~

~~10.2.d.~~ 10.2.c. When the second-hand bedding or upholstered furniture is intact, complete, has not been renovated or otherwise remade from its immediate prior owner, and has not been sterilized, the “Secondhand - Contents Unknown - Not Sterilized” dark yellow tag or label shall conform to the sample tag in Appendix ~~D~~ C of this rule.

~~10.2.e.~~ 10.2.d. When the second-hand bedding or upholstered furniture is intact, complete, has not been renovated or otherwise remade from its immediate prior owner, and has been sterilized, the “Secondhand - Contents Unknown - Sterilized” dark yellow tag or label shall conform to the sample tag in Appendix ~~E~~ D of this rule.

10.3. “Contents Declared Unclean” red tag or label.

10.3.a. If the Commissioner determines that an article of bedding, upholstered furniture, or filling material has come into contact with, or could have come into contact with, an individual with an infectious or contagious disease, he or she shall cause a red tag or label to be affixed to the exposed items.

10.3.b. When an article of bedding, upholstered furniture or filling material has been declared unclean, the “Contents Declared Unclean” red tag or label shall conform to the sample tag in Appendix ~~F~~ E of this rule.

10.4. “Article or Material Placed Off-Sale” blue tag or label.

10.4.a. If the Commissioner determines that an article of bedding, upholstered furniture, or filling material is not properly tagged or labeled as required by W. Va. Code §§47-1A-11 and -12, or that the tag or label contains inaccurate or misleading terms or information, he or she shall cause a blue tag or label to be affixed to the improperly or inaccurately tagged or labeled items.

10.4.b. When an article of bedding, upholstered furniture or filling material has been improperly or inaccurately tagged or labeled, the “Article or Material Placed Off-Sale” blue tag or label shall conform to the sample tag in Appendix ~~G~~ F of this rule.

APPENDIX A

~~BEDDING AND UPHOLSTERY~~ WHITE SAMPLE TAG / LABEL ALL

NEW MATERIAL

STITCHING AREA
UNDER PENALTY OF LAW THIS TAG SHALL NOT BE REMOVED EXCEPT BY THE CONSUMER
ALL NEW MATERIAL CONSISTING OF: CONTENTS STERILIZED
REGISTRATION #:
CERTIFICATION IS MADE BY THE MANUFACTURER THAT THE MATERIALS IN THIS ARTICLE ARE DESCRIBED IN ACCORDANCE WITH LAW
NAME AND ADDRESS OF MANUFACTURER:
OPTIONAL INFORMATION DATE OF DELIVERY: FINISHED SIZE: AND/OR WEIGHT: FEDERAL RN #: MADE IN:

APPENDIX C

**~~BEDDING AND UPHOLSTERY LIGHT YELLOW SAMPLE TAG / LABEL
RENOVATED OR REMADE FOR A SPECIFIC OWNER~~**

NOT TO BE SOLD

STITCHING AREA
UNDER PENALTY OF LAW THIS TAG SHALL NOT BE REMOVED EXCEPT BY THE CONSUMER
THIS ARTICLE HAS BEEN RENOVATED BY ADDING THE FOLLOWING MATERIALS:
OR
NO MATERIALS ADDED
STERILIZATION PERMIT #: WV
REGISTRATION #:
CERTIFICATION IS MADE THAT THE MATERIALS IN THIS ARTICLE ARE DESCRIBED IN ACCORDANCE WITH LAW
NOT FOR SALE TO THE GENERAL PUBLIC NAME AND ADDRESS OF OWNER:
DATE STERILIZED:
CONTENTS NOT STERILIZED:
NAME AND ADDRESS OF REMAKER OR RENOVATOR:

APPENDIX ~~D~~ C

~~BEDDING AND UPHOLSTERY~~ DARK YELLOW SAMPLE TAG / LABEL
SECONDHAND CONTENTS - CONTENTS UNKNOWN

NOT STERILIZED

STITCHING AREA
UNDER PENALTY OF LAW THIS TAG SHALL NOT BE REMOVED EXCEPT BY THE CONSUMER
SECONDHAND CONTENTS UNKNOWN NOT STERILIZED
REGISTRATION #:
CERTIFICATION IS MADE THAT THE MATERIALS IN THIS ARTICLE ARE DESCRIBED IN ACCORDANCE WITH LAW
NAME AND ADDRESS OF VENDOR
SOLD BY:

APPENDIX ~~E~~ D

~~BEDDING AND UPHOLSTERY~~ DARK YELLOW SAMPLE TAG / LABEL
SECONDHAND CONTENTS - CONTENTS UNKNOWN

STERILIZED

STITCHING AREA
UNDER PENALTY OF LAW THIS TAG SHALL NOT BE REMOVED EXCEPT BY THE CONSUMER
SECONDHAND CONTENTS UNKNOWN STERILIZED
STERILIZATION PERMIT #: DATE STERILIZED:
CERTIFICATION IS MADE THAT THE MATERIALS IN THIS ARTICLE ARE DESCRIBED IN ACCORDANCE WITH LAW
NAME AND ADDRESS OF STERILIZER:
SOLD BY:

APPENDIX ~~F~~ E

~~BEDDING AND UPHOLSTERY~~ RED SAMPLE TAG / LABEL

CONTENTS DECLARED UNCLEAN

STITCHING AREA
UNDER PENALTY OF LAW THIS TAG SHALL NOT BE REMOVED
THIS ARTICLE OR MATERIAL HAS BEEN PLACED OFF-SALE BY THE COMMISSIONER OF THE WEST VIRGINIA DIVISION OF LABOR.
SPECIAL NOTES: THIS ARTICLE HAS BEEN DECLARED "UNCLEAN"
NAME AND ADDRESS OF LOCATION WHERE PLACED OFF-SALE

APPENDIX ~~G~~ F

~~BEDDING AND UPHOLSTERY~~ BLUE SAMPLE TAG / LABEL

ARTICLE OR MATERIAL PLACED OFF-SALE

STITCHING AREA
UNDER PENALTY OF LAW THIS TAG SHALL NOT BE REMOVED
THIS ARTICLE OR MATERIAL HAS BEEN PLACED OFF-SALE BY THE COMMISSIONER OF THE WEST VIRGINIA DIVISION OF LABOR
SPECIAL NOTES
NAME AND ADDRESS OF LOCATION WHERE PLACED OFF-SALE: