

HEALTH & SAFETY CODE  
CHAPTER 345. BEDDING

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 345.001. DEFINITIONS. In this chapter:

(1) "Bedding" means a mattress, mattress pad, mattress protector, box spring, sofa bed, studio couch, chairbed, convertible bed, convertible lounge, pillow, bolster, quilt, quilted spread, comforter, cot pad, sleeping bag, lounge chair pad, utility or all-purpose pad, crib pad, playpen pad, crib bumper pad, car bed pad, infant carrier pad, convertible stroller pad, bassinet pad, bed rest and lounge-type cushion, or a stuffed or filled article that can be used by a human for sleeping or reclining.

(2) "Department" means the Texas Department of Health.

(3) "Manufacturer" means a person whose principal business is the manufacture of bedding from new materials for the purpose of resale in this state by a distributor, jobber, wholesaler, or retail outlet or subsidiary outlet if the ownership and the name are the same as the manufacturer, or if it is an exclusive sales outlet for the manufacturer, or both.

(4) "Material" means an article, substance, or part of an article or substance, used in the manufacture, repair, or renovation of bedding.

(5) "New" means no previous use for any purpose.

(6) "Processor" means a person who manufactures, processes, and sells in this state or for delivery in this state any filling materials, including felt, batting, pads, or foam, to be used or that could be used in bedding, other than wooden frames or metal springs.

(7) "Recycled material" means material that:

(A) is composed of recyclable material or that is derived from postconsumer waste or industrial waste; and

(B) may be used in place of raw or virgin filling material in manufacturing, repairing, or renovating bedding.

(8) "Renovate" means to restore to a former condition or to place in a good state of repair.

(9) "Secondhand" means previous use in any manner.

(10) "Sell" includes offering or exposing for sale, including in a sale, bartering, trading, delivering, consigning, leasing, possessing with intent to sell, or disposing of in any commercial manner.

(11) "Wholesaler" means a person located outside this state who on his own account sells, distributes, or jobs into this state to another for the purpose of resale bedding or filling material to be used in bedding. The term does not include an affiliate or subsidiary if the ownership and the name of the affiliate or subsidiary are the same as the manufacturer, and the affiliate or subsidiary is the exclusive sales outlet for the manufacturer.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1055, Sec. 1, eff. Sept. 1, 1997.

Sec. 345.002. EVIDENCE OF INTENT TO SELL. The possession of bedding by a manufacturer, renovator, wholesaler, or person holding a germicidal treatment permit in the course of business is presumptive evidence of an intent to sell the bedding.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 345.003. PAYMENT TO DEPARTMENT. Money collected in the administration of this chapter is payable to the department.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1055, Sec. 2, eff. Sept. 1, 1997.

Sec. 345.004. LIMIT ON EXPENDITURE OF MONEY. The expenditure of money under this chapter may not exceed the amount of money collected under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 345.005. MATERIALS OBTAINED FROM DUMP OR JUNKYARD. (a) A person may not manufacture, repair, or renovate bedding or batting using discarded materials obtained from any dump or junkyard.

(b) A person may not sell an item of discarded bedding obtained from a source set out in Subsection (a).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 345.0055. MATERIAL USED IN BEDDING. (a) The department may adopt rules relating to material used in new or renovated bedding, including rules:

(1) requiring the use of burn resistant material; and

(2) prohibiting or restricting the use of secondhand

or recycled material.

(b) Rules adopted under this section must be consistent with any applicable federal law or regulation.

Added by Acts 1997, 75th Leg., ch. 1055, Sec. 3, eff. Sept. 1, 1997.

Sec. 345.006. APPLICABILITY OF CHAPTER. This chapter does not apply to bedding manufactured, repaired, or renovated before June 30, 1939.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 345.007. ADVISORY COMMISSION. The Texas Board of Health may appoint an advisory commission composed of representatives of consumers and the bedding industry to assist the board in implementing this chapter.

Added by Acts 1997, 75th Leg., ch. 1055, Sec. 3, eff. Sept. 1, 1997.

#### SUBCHAPTER B. LABELS

Sec. 345.021. LABEL REQUIRED. (a) A person may not manufacture, repair, renovate, or sell bedding unless a label that conforms to this subchapter is:

(1) securely attached to the bedding at the location and by a method approved by the department; and

(2) clearly visible.

(b) The label must be made of substantial cloth or a substance of equal quality.

(c) The information required on a label by this chapter must be in English. The department may authorize or require the use of a language in addition to English on the label or on an additional separate label.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1055, Sec. 4, eff. Sept. 1, 1997.

Sec. 345.022. LABELS ON BEDDING MADE OF NEW OR SECONDHAND MATERIAL. (a) A label required under this section shall be attached at the factory in which the bedding is manufactured.

(b) A label attached to bedding wholly manufactured from new material must be at least six square inches and state, plainly stamped or printed in ink:

(1) "All New Material" in lettering at least one-eighth inch high;

(2) the kind and grade of each material used in the filling and, if more than one kind or grade of material is used, the percentage, in descending order, by weight of each material; and

(3) the manufacturer's permit number assigned by the department.

(c) A label attached to bedding any part of which is manufactured from secondhand or recycled material, other than bedding reworked, repaired, or renovated for the owner for the owner's personal use, must be at least 12 square inches and state, plainly stamped or printed in ink:

(1) "Secondhand or Recycled Material" in lettering at least one-fourth inch high; and

(2) the manufacturer's permit number assigned by the department.

(d) A label attached to bedding renovated, reworked, or repaired for the owner for the owner's personal use and from the owner's material that is in whole or in part secondhand must be at least six square inches and state, plainly stamped or printed in ink:

(1) "Not for Sale, Owner's Own Material which is Secondhand Material" in lettering at least one-eighth inch high;

(2) the name and address of the owner; and

(3) the manufacturer's permit number assigned by the department.

(e) A term used on a label required by this section to describe kinds and grades of material used in filling must conform to those defined in the department's rules, and a trade or substitute term may not be used.

(f) The department may adopt rules that:

(1) require that the label state conformity with burn resistant material requirements or identify any chemical treatment applied to the bedding; and

(2) exempt from the requirements of this section a custom upholstery business that does not repair or renovate bedding for resale.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1055, Sec. 4, eff. Sept. 1, 1997.

Sec. 345.023. FALSE OR MISLEADING STATEMENT PROHIBITED. A person may not make a false or misleading statement on a label

required by Section 345.022.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1055, Sec. 4, eff. Sept. 1, 1997.

Sec. 345.024. GERMICIDAL TREATMENT OF BEDDING AND MATERIALS. (a) Except as provided by Subsection (b), a person may not sell secondhand bedding or bedding manufactured in whole or in part from secondhand or recycled material unless the bedding has been germicidally treated and cleaned by a method approved by the department.

(b) An upholstered sofa bed, reclining chair, or studio couch shall be germicidally treated and cleaned only when required by department rules.

(c) A person may not use in the manufacture, repair, or renovation of bedding a material that has not been cleaned and germicidally treated by a process or treatment approved by the department if the material:

(1) has been used by a person with a communicable disease; or

(2) is filthy, oily, stained, or harbors loathsome insects or pathogenic organisms.

(d) A person may not sell material or bedding requiring germicidal treatment under this section unless the person applying the germicidal treatment securely attaches by a method approved by the department a label that is at least 12 square inches and contains, plainly printed in ink:

(1) a statement that the article or material has been germicidally treated by a method approved by the department;

(2) a statement of the method of germicidal treatment applied;

(3) the date the article was germicidally treated;

(4) the name and address of the person for whom the article was germicidally treated; and

(5) the permit number of the person applying the germicidal treatment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1055, Sec. 4, eff. Sept. 1, 1997.

Sec. 345.025. LABEL REQUIRED ON FILLING MATERIAL. A processor shall identify each item of material to be used for filling bedding by affixing to the filling material a label as required by department rules

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1055, Sec. 4, eff. Sept. 1, 1997.

Sec. 345.026. REMOVAL, DEFACEMENT, OR ALTERATION. A person may not remove, deface, or alter, or cause the removal, defacing, or alteration of, a label or a statement on the label to defeat a provision of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1055, Sec. 4, eff. Sept. 1, 1997.

Sec. 345.027. COLOR OF LABEL AND LETTERING. The department may adopt rules governing the color of label required under this subchapter and the color of the lettering on the label.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1055, Sec. 4, eff. Sept. 1, 1997.

Sec. 345.028. APPLICATION TO RECYCLED MATERIAL. Notwithstanding any other provision of this subchapter, this subchapter applies to bedding manufactured, repaired, or renovated in whole or in part from recycled materials only to the extent required by department rules.

Added by Acts 1997, 75th Leg., ch. 1055, Sec. 4, eff. Sept. 1, 1997.

#### SUBCHAPTER C. PERMITS

Sec. 345.041. PERMITS. (a) A person may not manufacture, wholesale, or engage in the business of renovating or selling bedding in this state or for delivery in this state unless the person has a permit for that purpose from the department.

(b) A processor may not sell filling material used for filling bedding in this state or for delivery in this state unless the person has a permit for that purpose from the department.

(c) The Texas Board of Health by rule may exempt from the permit requirement of this section a custom upholstery business that does not repair or renovate bedding for resale.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1055, Sec. 5, eff. Sept. 1, 1997.

Sec. 345.042. PERMIT TO APPLY GERMICIDAL TREATMENT. (a) A person may not apply a germicidal process unless:

(1) the process has been registered with and approved

by the department; and

(2) the person has a numbered germicidal treatment permit issued by the department.

(b) A permit may be renewed annually only after the permit holder submits proof of continued compliance with this chapter and department rules adopted under this chapter.

(c) A person who holds a permit shall keep the permit conspicuously posted on the premises of the person's business near the treatment device.

(d) A person who holds a permit shall keep an accurate record of all materials that have been germicidally treated. The record must include the:

- (1) source of the material;
- (2) date of treatment; and
- (3) name and address of the owner of each item.

(e) The record shall be available for inspection at any time by a representative of the department.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 345.043. FEES; EXPIRATION. (a) The Texas Board of Health shall set the fees for an initial permit issued under this chapter and for renewal of a permit issued under this chapter in amounts reasonable and necessary to defray the cost of administering this chapter.

(b) A fee collected under this chapter shall be deposited to a special account in the state treasury. Money in the account may be appropriated only to the department to administer and enforce this chapter.

(c) A permit expires one year after the date of issuance. Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1055, Sec. 6, eff. Sept. 1, 1997.

Sec. 345.0435. ADOPTION OF RULES; MINIMUM STANDARDS. (a) The executive commissioner of the Health and Human Services Commission shall adopt rules necessary to implement this subchapter, including requirements for the issuance, renewal, denial, suspension, and revocation of a permit issued under this subchapter.

(b) The rules must contain minimum standards to protect the health and safety of the public.

Added by Acts 1997, 75th Leg., ch. 1055, Sec. 7, eff. Sept. 1, 1997. Amended by Acts 2005, 79th Leg., ch. 153, Sec. 1, eff. Sept. 1, 2005.

Sec. 345.0436. SUBMISSION OF PRODUCT TEST RESULTS OR SAMPLE. In conjunction with the issuance or renewal of a permit under this subchapter, the department may require the applicant or permit holder to submit:

- (1) a product sample; or
- (2) the results of tests conducted on the product as

required by the department.

Added by Acts 1997, 75th Leg., ch. 1055, Sec. 7, eff. Sept. 1, 1997.

Sec. 345.044. REVOCATION OF PERMIT FOR UNSANITARY CONDITION. (a) A bedding manufacturer or renovator shall keep the manufacturer's or renovator's place of business in a sanitary condition satisfactory to the department.

(b) The department may revoke the permit of a bedding manufacturer or renovator who violates this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 345.045. MINIMUM SANITARY STANDARDS FOR GERMICIDAL TREATMENT PERMIT. (a) The holder of a germicidal treatment permit must maintain the permit holder's place of business in a sanitary condition free from refuse, dirt contamination, insects, and vermin.

(b) The executive commissioner of the Health and Human Services Commission, by rule, may establish additional requirements regulating the sanitary condition of a permit holder's place of business. The holder of a germicidal treatment permit who germicidally treats not more than 10 items at the permit holder's place of business each week is exempt from any additional requirements regulating the sanitary condition of a permit holder's place of business adopted under this subsection.

Added by Acts 2005, 79th Leg., ch. 153, Sec. 2, eff. Sept. 1, 2005.

#### SUBCHAPTER D. GENERAL ENFORCEMENT; CRIMINAL OFFENSE

Sec. 345.081. DUTY TO ENFORCE CHAPTER. The department shall enforce this chapter for the protection of the public health and welfare.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 345.082. RULEMAKING AUTHORITY. The department may adopt rules to implement and enforce this chapter. Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 345.083. INSPECTION. (a) To determine compliance with this chapter or a rule adopted under this chapter, a representative of the department may enter a place at which:

(1) bedding is manufactured, repaired, renovated, stored, or sold;

(2) materials are prepared for use in bedding; or

(3) germicidal treatment of bedding is performed.

(b) A representative of the department may take a sample of materials for inspection and analysis.

(c) A representative of the department may hold for evidence in a case involving a violation of this chapter or a rule adopted under this chapter bedding or materials manufactured, repaired, renovated, or sold in violation of this chapter or a rule adopted under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 345.084. SALE OF BEDDING OR MATERIAL PROHIBITED BY DEPARTMENT. (a) A representative of the department may prohibit the sale of specified bedding or material that is being or could be offered for sale in violation of this chapter or a rule adopted under this chapter.

(b) The representative shall appropriately tag any bedding or materials the sale of which is prohibited.

(c) A tag under this section may not be removed and bedding or materials that are tagged under this section may not be disposed of in any manner unless:

(1) satisfactory compliance with this chapter and the rules adopted under this chapter has been shown;

(2) a representative of the department releases the bedding for sale; and

(3) a representative of the department has approved the removal or the department has directed that the tag be removed and the bedding or materials may be disposed of.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 345.085. JUDICIAL REVIEW. A person aggrieved by a final decision of the department is entitled to judicial review.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 345.086. INTERFERENCE WITH DEPARTMENT REPRESENTATIVE. A person may not interfere with, obstruct, or hinder a representative of the department performing a duty under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 345.087. PROHIBITED ACTS; CRIMINAL OFFENSE. (a) A person commits an offense if a person:

(1) manufactures, repairs, or renovates:

(A) bedding using material in violation of rules adopted under Section 345.0055;

(B) bedding or batting in violation of Section 345.005;

(C) bedding using material in violation of Section 345.024; or

(D) bedding that does not conform to the label requirements of Subchapter B;

(2) introduces or delivers for introduction into commerce:

(A) bedding or batting manufactured, repaired, or renovated in violation of Section 345.005, 345.0055, or 345.024;

(B) bedding that does not conform to the label requirements of Subchapter B; or

(C) bedding or material the sale of which is prohibited as provided by Section 345.084;

(3) receives in commerce:

(A) bedding or batting manufactured, repaired, or renovated in violation of Section 345.005, 345.0055, or 345.024;

(B) bedding that does not conform to the label requirements of Subchapter B; or

(C) bedding or material the sale of which is prohibited as provided by Section 345.084; or

(4) violates Section 345.041, 345.042, or any other provision of this chapter or a rule adopted under this chapter.

(b) An offense under this section is a Class A misdemeanor.

(c) In a criminal proceeding under Subsection (a)(1), (2), or (3), it is not necessary to prove intent, knowledge,

recklessness, or criminal negligence.

(d) It is a defense to prosecution under Subsection (a)(2) or (3) that the person acted in good faith and was not the person who manufactured, repaired, or renovated the article. This subsection does not apply unless the person furnishes, on request of the department or a local health authority, the name and address of the person from whom the article was received and copies of any documents relating to receipt of the article.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1055, Sec. 8, eff. Sept. 1, 1997.

SUBCHAPTER E. ADMINISTRATIVE PENALTY; INJUNCTION

Sec. 345.101. ADMINISTRATIVE PENALTY. (a) The department may assess an administrative penalty against a person who violates this chapter or a rule adopted under this chapter.

(b) The penalty may not exceed \$25,000 for each violation. Each day of a continuing violation constitutes a separate violation.

(c) In determining the amount of an administrative penalty assessed under this section, the department shall consider:

- (1) the seriousness of the violation;
- (2) the history of previous violations;
- (3) the amount necessary to deter future violations;
- (4) efforts made to correct the violation; and
- (5) any other matters that justice may require.

(d) All proceedings for the assessment of an administrative penalty under this chapter are subject to Chapter 2001, Government Code.

Added by Acts 1997, 75th Leg., ch. 1055, Sec. 10, eff. Sept. 1, 1997.

Sec. 345.102. NOTICE; REQUEST FOR HEARING. (a) If, after investigation of a possible violation and the facts surrounding that possible violation, the department determines that a violation has occurred, the department shall give written notice of the violation to the person alleged to have committed the violation. The notice must include:

- (1) a brief summary of the alleged violation;
- (2) a statement of the amount of the proposed penalty based on the factors set forth in Section 345.101(c); and
- (3) a statement of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(b) Not later than the 20th day after the date on which the notice is received, the person notified may accept the determination of the department made under this section, including the proposed penalty, or may make a written request for a hearing on that determination.

(c) If the person notified of the violation accepts the determination of the department or if the person fails to respond in a timely manner to the notice, the commissioner of public health or the commissioner's designee shall issue an order approving the determination and ordering that the person pay the proposed penalty.

Added by Acts 1997, 75th Leg., ch. 1055, Sec. 10, eff. Sept. 1, 1997.

Sec. 345.103. HEARING; ORDER. (a) If the person notified requests a hearing, the department shall:

- (1) set a hearing;
  - (2) give written notice of the hearing to the person;
- and
- (3) designate a hearings examiner to conduct the hearing.

(b) The hearings examiner shall make findings of fact and conclusions of law and shall promptly issue to the commissioner of public health or the commissioner's designee a proposal for decision as to the occurrence of the violation and a recommendation as to the amount of the proposed penalty if a penalty is determined to be warranted.

(c) Based on the findings of fact and conclusions of law and the recommendations of the hearings examiner, the commissioner of public health or the commissioner's designee by order may find that a violation has occurred and may assess a penalty or may find that no violation has occurred.

Added by Acts 1997, 75th Leg., ch. 1055, Sec. 10, eff. Sept. 1, 1997.

Sec. 345.104. NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY;

JUDICIAL REVIEW; REFUND. (a) The department shall give notice of the order under Section 345.103(c) to the person alleged to have committed the violation. The notice must include:

(1) separate statements of the findings of fact and conclusions of law;

(2) the amount of any penalty assessed; and

(3) a statement of the right of the person to judicial review of the order.

(b) Not later than the 30th day after the date on which the decision is final as provided by Chapter 2001, Government Code, the person shall:

(1) pay the penalty;

(2) pay the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(c) Within the 30-day period, a person who acts under Subsection (b)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the department by certified mail.

(d) If the department receives a copy of an affidavit under Subsection (c)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

(e) If the person does not pay the penalty and the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the penalty.

(f) Judicial review of the order:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(g) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(h) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty under Subsection (b)(2) and if that amount is reduced or is not upheld by the court, the court shall order that the department pay the appropriate amount plus accrued interest to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person paid the penalty under Subsection (c)(1)(A), or gave a supersedeas bond, and if the amount of the penalty is not upheld by the court, the court shall order the release of the escrow account or bond. If the person paid the penalty under Subsection (c)(1)(A) and the amount of the penalty is reduced, the court shall order that the amount of the penalty be paid to the department from the escrow account and that the remainder of the account be released. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the

person pays the amount.

Added by Acts 1997, 75th Leg., ch. 1055, Sec. 10, eff. Sept. 1, 1997.

Sec. 345.105. PENALTY DEPOSITED TO STATE TREASURY. An administrative penalty collected under this subchapter shall be deposited in the state treasury to the credit of the general revenue fund.

Added by Acts 1997, 75th Leg., ch. 1055, Sec. 10, eff. Sept. 1, 1997.

Sec. 345.106. INJUNCTION. (a) At the request of the commissioner of public health, the attorney general may petition the district court for a temporary restraining order to restrain a continuing violation of this chapter or a threat of a continuing violation of this chapter if the commissioner of public health finds that:

(1) a person has violated, is violating, or is threatening to violate this chapter; and

(2) the violation or threatened violation creates an immediate threat to the health and safety of the public.

(b) A district court, on petition under this section and on a finding by the court that a person is violating or threatening to violate this chapter, shall grant any injunctive relief warranted by the facts.

(c) Venue for a suit brought under this section is in the county in which the violation or threat of violation is alleged to have occurred or in Travis County.

Added by Acts 1997, 75th Leg., ch. 1055, Sec. 10, eff. Sept. 1, 1997.

Sec. 345.107. RECOVERY OF COSTS. (a) The department may assess reasonable expenses and costs against a person in an administrative hearing if, as a result of the hearing, the person's permit is denied, suspended, or revoked or if administrative penalties are assessed against the person. The person shall pay expenses and costs assessed under this subsection not later than the 30th day after the date on which the order issued by the commissioner of public health or the commissioner's designee requiring the payment of expenses and costs is final. The department may refer the matter to the attorney general for collection of the expenses and costs.

(b) If the attorney general brings an action against a person under Section 345.106 or to enforce an administrative penalty assessed under this subchapter and an injunction is granted against the person or the person is found liable for an administrative penalty, the attorney general may recover, on behalf of the attorney general and the department, reasonable expenses and costs.

(c) For purposes of this section, "reasonable expenses and costs" include expenses incurred by the department and the attorney general in the investigation, initiation, or prosecution of an action, including reasonable investigative costs, court costs, attorney's fees, witness fees, and deposition expenses.

Added by Acts 1997, 75th Leg., ch. 1055, Sec. 10, eff. Sept. 1, 1997.

#### SUBCHAPTER F. DETENTION OR EMBARGO OF BEDDING

Sec. 345.131. DEFINITIONS. In this subchapter:

(1) "Authorized agent" means an employee of the department who is designated by the commissioner of public health to enforce the provisions of this chapter.

(2) "Detained or embargoed bedding" means bedding that has been detained or embargoed under Section 345.132.

Added by Acts 1997, 75th Leg., ch. 1055, Sec. 10, eff. Sept. 1, 1997.

Sec. 345.132. DETAINED OR EMBARGOED BEDDING. (a) The commissioner of public health or an authorized agent may detain or embargo bedding under this section if the commissioner or the authorized agent finds or has probable cause to believe that the article violates this chapter or a rule or standard adopted under this chapter.

(b) The commissioner of public health or an authorized agent shall affix to detained or embargoed bedding a tag or other appropriate marking that gives notice that:

(1) the bedding violates or is suspected of violating this chapter or a rule or standard adopted under this chapter; and

(2) the bedding has been detained or embargoed.

(c) The tag or marking on detained or embargoed bedding must



warn all persons not to use the bedding, remove the bedding from the premises, or dispose of the bedding by sale or otherwise until permission for use, removal, or disposal is given by the commissioner of public health, the authorized agent, or a court.

(d) A person may not use detained or embargoed bedding, remove detained or embargoed bedding from the premises, or dispose of detained or embargoed bedding by sale or otherwise without permission of the commissioner of public health, the authorized agent, or a court.

(e) The commissioner of public health or an authorized agent shall remove the tag or other marking from detained or embargoed bedding if the commissioner or an authorized agent finds that the bedding does not violate this chapter or a rule or standard adopted under this chapter.

Added by Acts 1997, 75th Leg., ch. 1055, Sec. 10, eff. Sept. 1, 1997.

Sec. 345.133. REMOVAL ORDER FOR DETAINED OR EMBARGOED BEDDING. (a) If the claimant of the detained or embargoed bedding or the claimant's agent fails or refuses to transfer the bedding to a secure place after the tag or other appropriate marking has been affixed as provided by Section 345.132, the commissioner of public health or an authorized agent may order the transfer of the bedding to one or more secure storage areas to prevent unauthorized use, removal, or disposal.

(b) The commissioner of public health or an authorized agent may provide for the transfer of the bedding if the claimant of the bedding or the claimant's agent does not carry out the transfer order in a timely manner.

(c) The claimant of the bedding or the claimant's agent shall pay the costs of the transfer, and the costs of any transfer made under Subsection (a) or (b) shall be assessed against the claimant of the bedding or the claimant's agent.

(d) The commissioner of public health may request the attorney general to bring an action in the district court in Travis County to recover the costs of the transfer. In a judgment in favor of the state, the court may award costs, attorney's fees, court costs, and interest from the time the expense was incurred through the date the department is reimbursed.

Added by Acts 1997, 75th Leg., ch. 1055, Sec. 10, eff. Sept. 1, 1997.

Sec. 345.134. CONDEMNATION. An action for the condemnation of bedding may be brought before a court in whose jurisdiction the bedding is located, detained, or embargoed if the bedding violates this chapter or a rule or standard adopted under this chapter.

Added by Acts 1997, 75th Leg., ch. 1055, Sec. 10, eff. Sept. 1, 1997.

Sec. 345.135. RECALL ORDERS. (a) In conjunction with the detention or embargo of bedding under this subchapter, the commissioner of public health may order bedding to be recalled from commerce.

(b) The commissioner of public health's recall order may require the bedding to be removed to one or more secure areas approved by the commissioner or an authorized agent.

(c) The recall order must be in writing and signed by the commissioner of public health.

(d) The recall order may be issued before or in conjunction with the affixing of the tag or other appropriate marking as provided by Section 345.132(b).

(e) The recall order is effective until the order:

- (1) expires on its own terms;
- (2) is withdrawn by the commissioner of public health;

or

(3) is reversed by a court in an order denying condemnation under Section 345.134.

(f) The claimant of the bedding or the claimant's agent shall pay the costs of the removal and storage of the bedding removed.

(g) If the claimant or the claimant's agent fails or refuses to carry out the recall order in a timely manner, the commissioner of public health may provide for the recall of the bedding. The costs of the recall shall be assessed against the claimant of the bedding or the claimant's agent.

(h) The commissioner of public health may request the attorney general to bring an action in the district court of Travis County to recover the costs of the recall. In a judgment in favor of

the state, the court may award costs, attorney's fees, court costs, and interest from the time the expense was incurred through the date the department is reimbursed.

Added by Acts 1997, 75th Leg., ch. 1055, Sec. 10, eff. Sept. 1, 1997.

Sec. 345.136. DESTRUCTION OF BEDDING. (a) A court shall order the destruction of detained or embargoed bedding if the court finds that the bedding violates this chapter or a rule or standard adopted under this chapter.

(b) After entry of the court's order, an authorized agent shall supervise the destruction of the bedding.

(c) The claimant of the article shall pay the cost of the destruction of the bedding.

(d) The court shall tax against the claimant of the bedding or the claimant's agent all court costs and fees and storage and other proper expenses.

Added by Acts 1997, 75th Leg., ch. 1055, Sec. 10, eff. Sept. 1, 1997.

Sec. 345.137. CORRECTION BY PROPER LABELING OR PROCESSING. (a) A court may order the delivery of detained or embargoed bedding that violates this chapter or a rule or standard adopted under this chapter to the claimant of the bedding for labeling or processing under the supervision of an agent of the commissioner of public health or an authorized agent if:

(1) the decree has been entered in the suit relating to the detained or embargoed bedding;

(2) the claimant has paid the costs, fees, and expenses of the suit;

(3) the violation can be corrected by proper labeling or processing; and

(4) a good and sufficient bond, conditioned on the correction of the violation by proper labeling or processing, has been executed.

(b) The claimant shall pay the costs of the supervision of the labeling or processing by the agent of the commissioner of public health or an authorized agent.

(c) The court shall order that the bedding be returned to the claimant and the bond discharged on the representation to the court by the commissioner of public health or an authorized agent that the article no longer violates this chapter or a rule or standard adopted under this chapter and that the expenses of the supervision are paid.

Added by Acts 1997, 75th Leg., ch. 1055, Sec. 10, eff. Sept. 1, 1997.