

BILL ANALYSIS

Senate Research Center

S.B. 1284
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Health & Human Services
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DIGEST

Currently, Texans who purchase reconditioned mattresses and certain upholstered furniture risk fire-related injuries and death and property losses caused by mattresses stuffed with flammable materials. The number of residential fires in Texas caused by bedding and upholstered furniture is three times the national average. The Texas Department of Health (TDH) has also received numerous reports of filthy, blood-soaked, and insect-filled materials being used in renovated mattresses. This bill authorizes TDH to adopt and enforce rules regarding certain materials used in renovated bedding and upholstered furniture. This bill also sets forth criminal and administrative penalties for noncompliance with certain requirements under this Act.

PURPOSE

As proposed, S.B. 1284 authorizes the Texas Department of Health to adopt and enforce certain rules relating to renovated bedding and upholstered furniture.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Texas Department of Health in SECTIONS 3 and 4 (Sections 345.0055(a) and 345.022(e), Health and Safety Code), to the Texas Board of Health in SECTIONS 4, 5, and 7 (Sections 345.027, 345.041(c), 345.0435(a), Health and Safety Code), and to the commissioner of the advisory commission or the commissioner's designee in SECTION 9 (Section 345.103(c), Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 345.001, Health and Safety Code, by amending Subdivisions (7), (8), (9), and (10), and adding Subdivision (11), to define "recycled material," to make conforming changes.

SECTION 2. Amends Section 345.003, Health and Safety Code, to provide that money, rather than money from the sale of stamps and other money, collected in the administration of this chapter is payable to the Texas Department of Health (department).

SECTION 3. Amends Chapter 345A, Health and Safety Code, by adding Sections 345.0055 and 345.007, as follows:

Sec. 345.0055. MATERIAL USED IN BEDDING. Authorizes the department to adopt rules relating to material used in new or renovated bedding, including rules requiring the use of burn-resistant material, and prohibiting or restricting the use of secondhand or recycled material. Requires rules adopted under this section to be consistent with any applicable federal law or regulation.

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

SECTION 4. Amends Chapter 345B, Health and Safety Code, as follows:

SUBCHAPTER B. New heading: LABELS

Sec. 345.021. New heading: LABEL REQUIRED. Sets forth instances in which a person is not prohibited from manufacturing, repairing, renovating, or selling bedding. Requires the label, rather than the tag, to be made of cloth, rather than white cloth, or a substance of equal quality. Authorizes the department to authorize or require the use of a language in addition to English on a label or on an additional separate label.

Sec. 345.022. LABELS ON BEDDING MADE OF NEW OR SECONDHAND MATERIAL. Requires a label attached to bedding wholly manufactured from new material to be at least six square inches and state, plainly stamped or printed in ink the kind and grade of each material used in the filling and, if more than one kind of grade of material is used the percentage, in descending order, by weight of each material. Requires a label attached to bedding any part of which is manufactured from secondhand or recycled material, to be a certain size and provide certain information. Authorizes the department to adopt certain rules relating to label requirements. Makes conforming and nonsubstantive changes.

Sec. 345.023. FALSE OR MISLEADING STATEMENT PROHIBITED. Makes a conforming change.

Sec. 345.024. GERMICIDAL TREATMENT OF BEDDING AND MATERIALS. Required a reclining chair to be germicidally treated and cleaned only when required by department rules. Prohibits a person from using in the manufacture, repair, or renovation of bedding a material that has not been cleaned and germicidal treated by a process or treatment approved by the department if the material is filthy, oily, stained, or harbors loathsome insects or pathogenic organisms, rather than bacteria. Prohibits a person from selling 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 certain type of label which has printed in ink the date, rather than lot number and the tag number of, the article was germicidally treated. Makes conforming and nonsubstantive changes.

Sec. 345.025. New heading: LABEL REQUIRED ON FILLING MATERIAL. Requires a processor to identify each item of material to be used for filling bedding by affixing to the filling material a label as required by department rules. Deletes text requiring the processor to identify certain shipments and deliveries of processed filling materials.

Sec. 345.026. REMOVAL, DEFACEMENT, OR ALTERATION. Makes conforming changes.

Sec. 345.027. COLOR OF LABELING AND LETTERING. Authorizes the department to adopt rules governing the color of label required under this subchapter and the color of the lettering on the label. Deletes the existing section.

Sec. 345.028. APPLICATION TO RECYCLED MATERIAL. Provides that 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.

SECTION 5. Amends Section 345.041, Health and Safety Code, by adding Subsection (c), to authorize the board, by rule, to exempt from the permit requirement of this section a custom upholstery business that does not repair or renovate bedding for resale.

SECTION 6. Amends Section 345.043, Health and Safety Code, to require the board to 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 certain costs, rather than \$15. Requires a fee collected under this section to be deposited to a special account in the state treasury. Authorizes money in the account to be appropriated only to the department to administer and enforce this chapter. Deletes a provision stating that the renewal fee for a permit is \$10.

SECTION 7. Amends Chapter 345C, Health and Safety Code, by adding Sections 345.0435 and

345.0436, as follows:

Sec. 345.0435. **ADOPTION OF RULES; MINIMUM STANDARDS.** Requires the board to adopt certain rules necessary to implement this subchapter. Requires the rules to contain minimum standards to protect the health and safety of the public.

Sec. 345.0436. **SUBMISSION OF PRODUCT TEST RESULTS OR SAMPLE.** Authorizes the department to require the applicant or permit holder to submit certain items, in conjunction with the issuance or renewal of a permit.

SECTION 8. Amends Section 345.087, Health and Safety Code, as follows:

Sec. 345.087. New heading: **PROHIBITED ACTS; CRIMINAL OFFENSE.** Provides that an offense under this section is a Class A misdemeanor, rather than punishable by a fine of not less than \$50 or more than \$200. Provides that a person commits an offense if a person performs certain functions. Provides that it is not necessary to prove intent, knowledge, recklessness, or criminal negligence in a criminal proceeding under Subsections (a)(1), (2), and (3). Provides that 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. Provides that this subsection does not apply unless the person furnishes certain information requested by the department.

SECTION 9. Repealer: Chapter 345D, Health and Safety Code (Stamps).

Provides that Chapter 345E, Health and Safety Code is redesignated as Chapter 345D, and the heading of Chapter 345E is amended as follows:

SUBCHAPTER D. New heading: **GENERAL ENFORCEMENT; CRIMINAL OFFENSE**

SECTION 10. Amends Chapter 345, Health and Safety Code, by adding new Subchapters E and F, as follows:

SUBCHAPTER E. **ADMINISTRATIVE OR CIVIL PENALTY; INJUNCTION**

Sec. 345.101. **ADMINISTRATIVE PENALTY.** Authorizes the department to assess an administrative penalty against a person who violates this chapter or a rule adopted under this chapter. Prohibits the penalty from exceeding \$25,000 for each violation. Provides that each day of a continuing violation constitutes a separate violation. Requires the department to consider certain factors when determining the amount of an administrative penalty assessed under this section. Provides that all proceedings for the assessment of an administrative penalty under this chapter are subject to Chapter 2001, Government Code.

Sec. 345.102. **NOTICE; REQUEST FOR HEARING.** Requires the department to give written notice of the violation to the person alleged to have committed the violation under certain conditions. Requires the notice to include certain information. Authorizes the person notified to accept the determination of the department made under this section, including the proposed penalty, or to make a written request for a hearing on that determination by a certain date. Requires the commissioner of the advisory commission (commissioner) or the commissioner's designee to issue an order approving the determination and ordering that the person pay the proposed penalty.

Sec. 345.103. **HEARING; ORDER.** Requires the department to perform certain functions if the person notified requests a hearing. Requires the hearings examiner to make findings of fact and conclusions of law and to promptly issue to the commissioner 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 under certain conditions. Authorizes the commissioner or the commissioner's designee, by order, to find that a violation has occurred and to assess a penalty, or to find that no violation has occurred.

Sec. 345.104. **NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY;**

JUDICIAL REVIEW; REFUND. Requires the department to give notice of the order under Section 345.103(c) to the person alleged to have committed the violation. Requires the notice to include certain information. Requires the person to perform certain functions not later than the 30th day after the date on which the decision is final as provided by Chapter 2001, Government Code. Authorizes a person who acts under Subsection (b)(3) within the 30-day period to complete certain tasks. Authorizes the department to file with the court, within a certain period, a contest to an affidavit received under Subsection (c)(2). Sets forth the procedures for fulfilling the requirements of an affidavit under this section. Sets forth conditions to be enacted if a person does not pay the penalty and the penalty is not stayed under this section. Sets forth the intended meaning of judicial review of the order under this section. Sets forth criteria for the enforcement and payment of a penalty under this section.

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

Sec. 345.106. INJUNCTION. Authorizes the attorney general to petition the district court for a temporary restraining order to restrain a continuing violation of this chapter under certain conditions determined by the commissioner. Requires a district court in certain circumstances to grant an injunctive relief warranted by the facts. Provides that 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.

Sec. 345.107. CIVIL PENALTY. Sets forth the procedure for collecting a civil penalty and determining the amount of the penalty under this section. Provides that venue for a suit brought under this section is in the county in which the violation occurred or in Travis County.

Sec. 345.108. RECOVERY OF COSTS. Authorizes the department to assess reasonable expenses and costs against a person in an administrative hearing under certain conditions. Requires a person to pay expenses and costs assessed under this subsection by a certain date. Authorizes the department to refer the matter to the attorney general for collection of the expenses and costs. Authorizes the attorney general to recover, on behalf of the attorney general and the department, reasonable expenses and costs under certain conditions. Defines "reasonable expenses and costs."

SUBCHAPTER F. DETENTION OR EMBARGO OF BEDDING

Sec. 345.131. DEFINITIONS. Defines "authorized agent" and "detained or embargoed bedding."

Sec. 345.132. DETAINED OR EMBARGOED BEDDING. Sets forth provisions for detained or embargoed bedding under this section.

Sec. 345.133. REMOVAL ORDER FOR DETAINED OR EMBARGOED BEDDING. Authorizes the commissioner or an authorized agent to order the transfer of the bedding to one or more secure storage areas to prevent unauthorized use, removal, or disposal under certain conditions. Authorizes the commissioner or an authorized agent to 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. Requires the claimant of the bedding or the claimant's agent to pay certain costs. Authorizes the commissioner to request the attorney general to bring an action in the district court in Travis County to recover the costs, attorney's fees, court costs, and interest from the time the expense was incurred through the date the department was reimbursed.

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

Sec. 345.135. RECALL ORDERS. Authorizes the commissioner to order bedding to be recalled for commerce under certain conditions. Sets forth the criteria for a recall order under this section.

Sec. 345.136. DESTRUCTION OF BEDDING. Requires a court to order the destruction of detained or embargoed bedding under certain conditions. Requires an authorized agent to supervise the destruction of the bedding. Requires the claimant of the article to pay the cost of the destruction of the bedding. Requires the court to tax against the claimant of the bedding or the claimant's agent all court costs and fees and storage and other proper expenses.

Sec. 345.137. CORRECTION BY PROPER LABELING OR PROCESSING. Authorizes a court to 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 or an authorized agent under certain conditions. Requires the claimant to pay the costs of the supervision of the labeling or processing by the agent of the commissioner or an authorized agent. Requires the court to order that the bedding be returned to the claimant and the bond discharged on the representation to the court by the commissioner 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.

- SECTION 11. Effective date: September 1, 1997.
- SECTION 12. Makes application of SECTION 7 of this Act prospective to January 1, 1998.
- SECTION 13. Makes application of this Act prospective.
- SECTION 14. Makes application of this Act prospective.
- SECTION 15. Emergency clause.