



COMMONWEALTH of VIRGINIA

Department of Health

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TO: Bedding and Upholstered Furniture Program Staff

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Bedding and Upholstered Furniture Program

AUTHORITY: Title 32.1 of the Code of Virginia; *Regulations for Bedding and Upholstered Furniture Program*, 12VAC5-125

SUBJECT: Legal Authority Regarding Sales of Bedding and Upholstered Furniture through Consignment

PURPOSE: To provide guidance and prescribe the standard operating procedures pertaining to the Virginia Department of Health's regulatory authority over the sale of used or secondhand bedding and upholstered furniture at consignment stores.

Definitions

"Bedding" means any mattress, mattress pad, box spring, upholstered bed, davenport, futon, upholstered sofa bed, quilted pad, packing pads, hammock pad, comforter, quilt, bolster, cushion, pillow, featherbed, sleeping bag, studio couch, or any other bag, case, pillow, cushion, or cover made of leather, textile, or other material that is stuffed or filled in whole or in part with a concealed substance that can be used by any human being for sleeping or reclining purposes.

"Secondhand" means having been made prior use of or containing any filling material of which prior use has been made or that has been in a customer's possession.

"Sell" or any of its variants, includes any of, or any combination of, the following: sell, offer or expose for sale, barter, trade, deliver, give away, rent, consign, lease, possess with an intent to sell or dispose of in any other commercial manner.

“Upholstered furniture” means any article of furniture designed to be used for sitting, resting, or reclining that is wholly or partly stuffed or filled with filling material. Upholstered furniture may include, but is not limited to: children’s furniture, furniture used exclusively for the purpose of physical fitness and exercise, medical equipment, or furniture or seats in RVs, boats, or automobiles. Upholstered furniture may be movable or stationary, made or sold with cushions or pillows, loose or attached, or is itself stuffed or filled in whole or in part with any substance or material, hidden or concealed by fabric or any other covering, including cushions or pillows belonging to or forming a part thereof, together with the structural units, the filling material and its container and its covering that can be used as a support for the body of a human being or his limbs and feet.

“Used” means bedding or upholstered furniture that has been previously owned or used by another person.

Background

Under the Regulations for Bedding and Upholstered Furniture Inspection Program (12VAC5-125, the “Regulations”), dealers of secondhand bedding and upholstered furniture must sanitize these products prior to sale or rental, and a permit to sanitize is required.

Code of Virginia § 32.1-225(A)(1) exempts “any sale by any individual of his household effects” from the provisions of Code of Virginia §§ 32.1-212 through 226. Similarly, 12VAC5-125-40(1) of the Regulations exempts “any sale by any individual of his household effects” from the provisions of the Regulations.

The traditional consignment model involves individuals selling their household effects under the brokerage of a consignment store owner. Under this traditional consignment model, the exemptions discussed above apply to sales of such household effects through a consignment store because the individual still owns the household effects being offered for sale at the consignment store. However, the precise business model used by stores describing themselves as “consignment” may vary. Consequently, not all sales through a “consignment store” will in fact fall within the exemptions from VDH’s authority. This requires that VDH have a uniform and transparent process that it uses to determine whether the exemption described in § 32.1-225(A)(1) of the Code of Virginia and 12VAC5-125-40(1) of the Regulations apply.

Guidelines

1. For consignment shops that are not permitted sanitizers, the Virginia Department of Health Compliance Officer should use proper administrative procedures described by the Administrative Process Act (Title 2.2, Chapter 40 of the Code of Virginia) to determine:
 - a. if used or secondhand bedding and/or upholstered furniture items are for sale or other commercial distribution; and

- b. the current and potential future ownership of the used or secondhand bedding and/or upholstered furniture items that are being offered for sale at a consignment store.
2. To determine whether regulatory authority extends to a consignment store, first determine the ownership of the items offered for sale.
- a. The exemption applies (meaning that no regulatory authority exists and a sanitizing permit is not required), if the items are offered for sale under a traditional consignment model, as described above. In this model, unsold items are returned by the consignment store to the individual consignor if not sold; or items are otherwise disposed of in a non-commercial manner.
 - b. Regulatory authority exists and a sanitizing permit is required if used or secondhand consigned bedding and upholstered furniture items become the property of the consignment store before sale.