

**Proposed Revisions/Additions to Chapter 106, Article 4H of the General Statutes**  
**Bedding Law**

**§106-65.94. Sleep Products Section in Structural Pest Control and Pesticides Division of Department of Agriculture and Consumer Services created; Director.**

There is hereby created within the North Carolina Department of Agriculture and Consumer Services, Structural Pest Control and Pesticides Division, a new section thereof, to be known as the Sleep Products Section of said Division.

The Commissioner of Agriculture is hereby authorized to appoint a Director of said Section whose duties and authority shall be determined by the Commissioner.

For the enforcement of the provisions of this Article, the Director is authorized, subject to the approval of the Commissioner to appoint employees as are necessary in order to carry out and enforce the provisions of this Article.

**§ 106-65.108. Injunctions restraining violations.**

In addition to the remedies hereinafter provided, the Director is hereby authorized to apply to the superior court for, and such court shall have jurisdiction upon hearing and for cause shown to grant, a temporary or permanent injunction restraining any person from violating any provision of this Article or any rule promulgated there under, irrespective of whether or not there exists an adequate remedy at law.

**§ 106-65.109. Detention or embargo of product or item suspected of being adulterated or misbranded.**

(a) If an authorized agent of the Department of Agriculture and Consumer Services finds or has probable cause to believe, that any bedding, secondhand bedding, material, or other item regulated under this Article is unsanitary, mislabeled, unsafe for its intended use, a danger to the public, or otherwise in violation of the requirements of this Article, the agent may affix to such item a tag or other appropriate marking giving notice that such item is, or is suspected of being, unsanitary or mislabeled, containing toxic materials, or otherwise in violation of this Article, the item has been detained or embargoed, and warning all persons not to remove or alter the tag, or dispose of such item by sale or otherwise, until permission for removal or disposal is given by such agent or the court. It shall be a violation of this Article for any person to remove or alter a tag authorized by this subsection, or to remove or dispose of a detained or embargoed item by sale or otherwise, without such permission.

(b) When an item is detained or embargoed under subsection (a), the agent may petition a judge of the district, or superior court in whose jurisdiction the article is detained or embargoed

for an order for condemnation of such item. When such agent has found that an item so detained or embargoed is not unsanitary, mislabeled, unsafe for its intended use, a danger to the public, or otherwise in violation of the requirements of this Article, the agent shall remove the tag or other marking.

(c) If the court finds that a detained or embargoed item is unsanitary, mislabeled, or contains toxic materials, such items 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, and storage and other proper expenses, shall be taxed against the claimant of such article or his agent: Provided, that when the unsanitary condition, mislabeling, safety concerns, or other violation can be corrected by proper labeling or processing of the item, 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 item shall be so labeled or processed, has been executed, may by order direct that such item be delivered to the claimant thereof for such labeling or processing under the supervision of an agent of the Department of Agriculture and Consumer Services. The expense of such supervision shall be paid by the claimant. Such bond shall be returned to the claimant of the item on representation to the court by the Department of Agriculture and Consumer Services that the item is no longer in violation of this Article, and that the expenses of such supervision have been paid.

#### **§ 106-65.110. Civil penalties.**

(a) The Director may assess a civil penalty of not more than Two Thousand Five Hundred dollars (\$2,500) per violation against any person, firm or corporation who violates or directly causes a violation of any provision of this Article, rule promulgated thereunder, or lawful order of the Director. In addition, if any person continues to violate or further violates any provision of this Article after written notice from the Director, the Director may determine that each day during which the violation continued or is repeated constitutes a separate violation subject to additional civil penalties. In determining the amount of the penalty, the Director shall consider the degree and extent of harm caused or potentially caused by the violation.

(b) Prior to assessing a civil penalty, the Director shall give the person written notice of the violation and a reasonable period of time in which to correct the violation. However, the Director shall not be required to give a person time to correct a violation before assessing a penalty if the Director determines the violation has the potential to cause future physical injury or illness.

(c) The Director may consider the training and management practices implemented by the person, firm or corporation for the purpose of complying with this Article as a mitigating factor when determining the amount of the civil penalty.

(d) The Director shall remit the clear proceeds of civil penalties assessed pursuant to this section to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

**§ 106-65.111. Violation a misdemeanor.**

- (a) Any person, firm or corporation who shall violate any of the provisions of this Article, or any of the rules, regulations or standards promulgated hereunder, shall be deemed guilty of a Class 2 misdemeanor.
- (b) Any person, firm or corporation who provides the Director or a duly authorized agent of with Director with false or misleading information in relation to a license application or renewal, inspection, or investigation authorized by this Article, shall be deemed guilty of a Class 2 misdemeanor.
- (c) Any person, firm, or corporation who alters or removes a tag indicating that an item has been detained or embargoed under G.S. § 106-65.109(a) without first receiving permission from the court or a duly authorized agent under this Article, shall be deemed guilty of a Class 2 misdemeanor. Any person, firm, or corporation who removes or disposes of any item detained or embargoed under G.S. § 106-65.109(a), without first receiving permission from the court or a duly authorized agent under this Article, shall be deemed guilty of a Class 2 misdemeanor .
- (d) If any person continues to violate or further violates any provision of this Article after written notice from the Director, the court may determine that each day during which the violation continued or is repeated constitutes a separate violation.

**§ 106-65.112. Interference with inspector.**

Any person who willfully assaults, resists, opposes, impedes, intimidates, or interferes with any person while engaged in or on account of the performance of his official duties under this Article shall be guilty of a Class 2 misdemeanor. For the purposes of this section, "impede," "oppose," and "intimidate," or "interfere" shall include, but not be limited to, the use of profane and indecent language, or any act or gesture, verbal or nonverbal, which tends to cast disrespect on an inspector. Whoever, in the commission of any such acts, uses a deadly weapon, shall be guilty of a Class 1 misdemeanor.

**§ 106-65.113. Report of minor violations in discretion of Director.**

Nothing in this Article shall be construed to require the Director to initiate, or attempt to initiate, any criminal or administrative proceedings under this Article for minor violations of this Article whenever the Director believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning.