



Senate

General Assembly

File No. 191

February Session, 2012

Substitute Senate Bill No. 89

Senate, April 2, 2012

The Committee on Environment reported through SEN. MEYER of the 12th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT ESTABLISHING A MATTRESS STEWARDSHIP PROGRAM.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2012*) For the purposes of
2 sections 1 to 8, inclusive, of this act:

3 (1) "Brand" means a name, symbol, word or mark that attributes a
4 mattress to the producer of such mattress;

5 (2) "Commissioner" means the Commissioner of Energy and
6 Environmental Protection;

7 (3) "Covered entity" means any person in the state with a discarded
8 mattress that is generated in the state;

9 (4) "Department" means the Department of Energy and
10 Environmental Protection;

11 (5) "Discarded mattress" means any mattress that is no longer used
12 for its manufactured purpose or that is no longer wanted by a person;

13 (6) "Energy recovery" means the process by which all or a portion of
14 solid waste materials are processed or combusted in order to utilize the
15 heat content or other forms of energy derived from such solid waste
16 materials;

17 (7) "Foundation" means any ticking-covered structure that is used to
18 support a mattress and that is composed of one or more of the
19 following: A constructed frame, foam or a box spring. "Foundation"
20 does not include any bed frame or base made of wood, metal or other
21 material that rests upon the floor and that serves as a brace for a
22 mattress;

23 (8) "Market share" means the national sales of any manufacturer of
24 mattresses expressed as a percentage of the total of national sales by all
25 mattress manufacturers;

26 (9) "Mattress" means any resilient material or combination of
27 materials that is enclosed by a ticking, used alone or in combination
28 with other products, and that is intended for or promoted for sleeping
29 upon. "Mattress" includes any foundation and any renovation.
30 "Mattress" does not include any mattress pad, mattress topper,
31 sleeping bag, pillow, car bed, carriage, basket, dressing table, stroller,
32 playpen, infant carrier, lounge pad, crib bumper, liquid and gaseous
33 filled ticking including any water bed and air mattress that does not
34 contain upholstery material between the ticking and the mattress core,
35 and upholstered furniture that does not otherwise contain a detachable
36 mattress;

37 (10) "Mattress core" means the main support system that is present
38 in a mattress, including, but not limited to, springs, foam, water
39 bladder, air bladder or resilient filling;

40 (11) "Mattress stewardship plan" or "plan" means the plan
41 submitted for the establishment of a state-wide mattress stewardship
42 program described in section 2 of this act;

43 (12) "Mattress stewardship program" or "program" means the state-

44 wide program described in section 2 of this act and implemented
45 pursuant to the mattress stewardship plan;

46 (13) "Mattress topper" means any item that contains resilient filling,
47 with or without ticking, that is intended to be used with or on top of a
48 mattress;

49 (14) "Performance goal" means a metric proposed by either the
50 representative organization or the department, and approved by the
51 commissioner, to measure, on an annual basis, the performance of the
52 mattress stewardship program in achieving continuous, meaningful
53 improvement in improving the rate of mattress recycling in the state
54 and any other specified goal of the program;

55 (15) "Producer" means any person who manufactures or renovates a
56 mattress that is sold, offered for sale or distributed in the state under
57 the manufacturer's own name or brand. "Producer" includes (A) the
58 owner of a trademark or brand under which a mattress is sold, offered
59 for sale or distributed in this state, whether or not such trademark or
60 brand is registered in this state, and (B) any person who imports a
61 mattress into the United States that is sold or offered for sale in this
62 state and that is manufactured or renovated by a person who does not
63 have a presence in the United States;

64 (16) "Recycling" means any process in which original discarded
65 products, components and by-products may lose their original identity
66 or form as they are transformed into new, usable or marketable
67 materials. "Recycling" does not include energy recovery;

68 (17) "Renovate" or "renovation" means altering a mattress for the
69 purpose of resale and includes any one, or a combination of, the
70 following: Replacing the ticking or filling, adding additional filling,
71 rebuilding a mattress, or replacing components with new or recycled
72 materials. "Renovate" or "renovation" does not include the (A)
73 stripping of a mattress of its ticking or filling without adding new
74 material, (B) sterilizing or sanitizing of a mattress without otherwise
75 altering the mattress, (C) altering of a mattress by a renovator when a

76 person retains the altered mattress for lease, rental or personal use, or
77 (D) refurbishing that disqualifies a mattress for a yellow wholesale
78 renovator tag to be affixed to the mattress, in accordance with
79 regulations of the Department of Consumer Protection;

80 (18) "Renovator" means a person who renovates post-consumer
81 mattresses for the purpose of reselling such mattresses in a retail store;

82 (19) "Representative organization" or "organization" means the
83 organization created by producers to design, submit and implement
84 the mattress stewardship program described in section 2 of this act;

85 (20) "Retailer" means any person who sells mattresses in this state or
86 offers mattresses in this state to a consumer;

87 (21) "Reuse" means the return of a mattress into the economic
88 stream for use in the same kind of application as the mattress was
89 originally intended to be used, without a change in the form or
90 identity of the mattress;

91 (22) "Sanitization" means the direct application of chemicals to a
92 mattress to kill human disease-causing pathogens;

93 (23) "Sale" means the transfer of title of a mattress for consideration,
94 including through the use of a sales outlet, catalog, Internet web site or
95 similar electronic means;

96 (24) "Sterilization" means the mitigation of any deleterious
97 substances or organisms including human disease-causing pathogens,
98 fungi and insects from a mattress or filling material using a process
99 approved by the Commissioner of Consumer Protection;

100 (25) "Ticking" means the outermost layer of fabric or material of a
101 mattress. "Ticking" does not include any layer of fabric or material
102 quilted together with, or otherwise attached to, the outermost layer of
103 fabric or material of a mattress;

104 (26) "Upholstery material" means all material, loose or attached,

105 between the ticking and the core of a mattress; and

106 (27) "Wholesaler" means any person who sells or distributes
107 mattresses in the state, in a nonretail setting, for the purpose of the
108 resale of such mattresses.

109 Sec. 2. (NEW) (*Effective October 1, 2012*) (a) On or before July 1, 2013,
110 each producer shall join the representative organization and such
111 representative organization shall submit a plan, for the commissioner's
112 approval, to establish a state-wide mattress stewardship program, as
113 described in this subsection. Such mattress stewardship program shall:
114 (1) Minimize public sector involvement in the management of post-
115 consumer mattresses by negotiating and executing agreements to
116 collect, transport, reuse, renovate, recycle, burn for energy recovery
117 and dispose of post-consumer mattresses, regardless of brand and
118 while using environmentally sound management practices; (2) provide
119 for the free, convenient and accessible state-wide collection of post-
120 consumer mattresses that, at a minimum, achieves collection rates and
121 convenience equal to, or greater than, the collection programs available
122 to consumers prior to the inception of the program; (3) provide for
123 producer-financed end-of-life management for discarded mattresses,
124 including transportation from: (A) Any covered entity that is not a
125 permitted municipal solid waste transfer station and that has
126 aggregated fifty or more segregated, post-consumer discarded
127 mattresses, (B) any municipal transfer station permitted to accept
128 mattresses with twenty-five or more segregated, post-consumer
129 discarded mattresses, and (C) any municipal transfer station permitted
130 to accept mattresses with one or more segregated, post-consumer
131 discarded mattresses once per calendar year; (4) provide suitable
132 storage containers at permitted municipal transfer stations for
133 segregated, discarded mattresses, at no cost to such municipality; and
134 (5) include a funding mechanism, as described in subsection (c) of this
135 section, that is approved by the producers who participate in the
136 representative organization and that provides sufficient funding for
137 the program.

138 (b) The plan submitted pursuant to subsection (a) of this section
139 shall: (1) Identify each producer participating in the program and
140 include contact information for each such producer on a form
141 provided by the commissioner; (2) identify by producer, the brands of
142 mattresses sold in the state that will be covered by the program; (3)
143 describe the funding mechanism for the program; (4) establish
144 performance goals for the program; (5) identify transporters,
145 nonmunicipal collection and aggregation points, processing facilities,
146 and disposal facilities to be used in the program; (6) describe how the
147 program will be consistent with the state solid waste management
148 plan; (7) detail how the program will promote the recycling of post-
149 consumer mattresses; (8) describe any strategies to promote market
150 growth of recycled products made from processed materials from
151 discarded mattresses and to develop recycling infrastructure in the
152 state; and (9) include a description of the public education program,
153 including informational materials for wholesalers, retailers,
154 municipalities and covered entities, designed to create awareness of
155 the program and encourage participation in the program.

156 (c) The representative organization shall be a nonprofit organization
157 with a fee structure that covers, but does not exceed, the costs of
158 developing the plan described in subsection (b) of this section and
159 operating the program described in subsection (a) of this section. The
160 representative organization shall maintain all records relating to the
161 program for a period of not less than three years.

162 (d) The funding mechanism for the program shall be based on a
163 producer's annual market share, as determined by nationally available
164 market share data, including, but not limited to, the number of units
165 shipped, retail sales data, consumer surveys and information provided
166 by producers. Any producer with less than one-tenth of one per cent
167 market share shall be deemed to be de minimis and shall not be
168 responsible for payment of a pro rata share of costs necessary to
169 operate the program. Notwithstanding the provisions of this
170 subsection, the commissioner and representative organization may
171 agree on an alternative, producer-financed funding mechanism.

172 (e) The owner or operator of any facility that is part of the program
173 shall operate such facility in compliance with any applicable federal or
174 state law or regulation.

175 (f) Pursuant to the program, recycling shall be preferred over any
176 other disposal method to the extent that recycling is technologically
177 feasible and economically practical.

178 (g) The commissioner may approve the plan for the establishment of
179 the mattress stewardship program, provided such plan meets the
180 requirements of subsection (b) of this section and such program meets
181 the requirements of subsection (a) of this section. Not later than ninety
182 days after submission of the plan pursuant to this section, the
183 commissioner shall make a determination whether to approve the
184 plan. Prior to making such determination, the commissioner shall post
185 the plan on the department's Internet web site and solicit public
186 comments on the plan. In the event that the commissioner does not
187 approve the plan, the commissioner shall describe the reasons for the
188 disapproval in a notice of determination that the commissioner shall
189 provide to the representative organization. The representative
190 organization shall revise and resubmit the plan to the commissioner
191 not later than forty-five days after receipt of notice of the
192 commissioner's disapproval notice. Not later than forty-five days after
193 receipt of the revised plan, the commissioner shall review and approve
194 or disapprove the revised plan. The representative organization may
195 resubmit a revised plan to the commissioner for approval on not more
196 than two occasions. If the representative organization fails to submit a
197 plan that is acceptable to the commissioner, the commissioner shall
198 modify a submitted plan and approve it. Not later than sixty days after
199 the approval of a plan pursuant to this section, the representative
200 organization shall implement the mattress stewardship program.

201 (h) The representative organization shall submit an amended plan
202 to the commissioner, for approval, whenever there is a proposed
203 substantial change to the program. Prior to making a determination to
204 approve or disapprove an amended plan, the commissioner shall post

205 the amended plan on the department's Internet web site and solicit
206 public comments. For the purposes of this subsection, "substantial
207 change" shall include, but not be limited to, a change in: (1) The
208 program's funding mechanism, (2) processing facilities to be used for
209 discarded mattresses collected pursuant to the program, and (3) the
210 system for collecting mattresses.

211 (i) The representative organization shall notify the commissioner of
212 any other changes to the program on an ongoing basis, whenever they
213 occur, without resubmission of the plan to the commissioner for
214 approval. Such changes shall include, but not be limited to, a change
215 in: (1) The transporters used by the program, (2) the producers and the
216 respective brands entering or leaving the representative organization,
217 and (3) contact information for producers, the representative
218 organization and significant program participants.

219 (j) Not later than October fifteenth of each year, the representative
220 organization shall submit an annual report to the commissioner, on a
221 form prescribed by the commissioner. The commissioner shall post
222 such annual report on the department's Internet web site. Such report
223 shall include: (1) The tonnage of mattresses collected pursuant to the
224 program from: (A) Municipal transfer stations, (B) retailers, and (C) all
225 other covered entities; (2) the tonnage of mattresses diverted for
226 recycling; (3) the weight of post-consumer discarded mattresses
227 recycled, as indicated by the weight of each of the commodities sold to
228 secondary markets; (4) the weight of mattresses sent for disposal at
229 each of the following: (A) Waste-to-energy facilities, (B) landfills, and
230 (C) any other facilities; (5) public education materials and methods
231 used to support the program; (6) an evaluation of the effectiveness of
232 methods and processes used to achieve performance goals of the
233 program; (7) recommendations for any changes to the program; and (8)
234 any other information requested by the commissioner.

235 (k) Two years after the implementation of the program and upon
236 the request of the commissioner but not more frequently than once a
237 year, the representative organization shall cause an audit of the

238 program to be conducted by an independent auditing firm who shall
239 be selected by the representative organization and approved by the
240 commissioner. Such audit shall determine if the funding mechanism is
241 covering, but not exceeding program operation costs, review the
242 accuracy of the representative organization's data concerning the
243 program and provide any other information requested by the
244 commissioner. Such audit shall be paid for by the representative
245 organization. The representative organization shall maintain all
246 records relating to the program for not less than three years.

247 Sec. 3. (NEW) (*Effective October 1, 2012*) (a) No retailer shall sell any
248 mattress from a producer who is not in compliance with the provisions
249 of sections 1 to 8, inclusive, of this act. A producer's compliance with
250 the provisions of sections 1 to 8, inclusive, of this act may be
251 determined by examining the list of participating producers posted on
252 the department's Internet web site pursuant to section 4 of this act. No
253 retailer shall be in violation of the provisions of this subsection if, on
254 the date the mattress was ordered from the producer or its agent, the
255 producer or the subject brand of mattress was listed on the
256 department's Internet web site in accordance with the provisions of
257 section 4 of this act.

258 (b) Retailers may provide information to consumers regarding
259 recycling facilities and companies that collect or recycle mattresses and
260 may serve as voluntary collection sites for mattresses pursuant to the
261 program.

262 (c) No covered entity that participates in the program shall charge
263 for receipt of mattresses generated in the state. Covered entities may
264 charge a fee for providing the service of collecting mattresses and may
265 restrict the acceptance of mattresses by number, source or physical
266 condition.

267 Sec. 4. (NEW) (*Effective October 1, 2012*) Not later than thirty days
268 after the establishment of the program, the commissioner shall post a
269 list of producers and their brands that are in compliance with the
270 requirements of sections 1 to 8, inclusive, of this act on the

271 department's Internet web site.

272 Sec. 5. (NEW) (*Effective October 1, 2012*) Not later than three years
 273 after the approval of the plan pursuant to section 2 of this act, the
 274 commissioner shall submit a report, in accordance with section 11-4a
 275 of the general statutes, to the joint standing committee of the General
 276 Assembly having cognizance of matters relating to the environment.
 277 Such report shall provide an evaluation of the mattress stewardship
 278 program, establish a goal for the diversion of mattresses from solid
 279 waste disposal facilities and a separate goal for the recycling of
 280 mattresses, taking into consideration technical and economic
 281 feasibilities.

282 Sec. 6. (NEW) (*Effective October 1, 2012*) Each producer and the
 283 representative organization shall be immune from liability for any
 284 claim of antitrust law or unfair trade practice, if such conduct is a
 285 violation of antitrust law, to the extent such producer or representative
 286 organization is exercising authority pursuant to the provisions of
 287 sections 1 to 8, inclusive, of this act.

288 Sec. 7. (NEW) (*Effective October 1, 2012*) The commissioner may seek
 289 civil enforcement of the provisions of sections 2 and 3 of this act
 290 pursuant to chapter 439 of the general statutes.

291 Sec. 8. (NEW) (*Effective October 1, 2012*) A producer who sells fewer
 292 than one thousand mattresses in the state during a calendar year shall
 293 be exempt from the requirements of sections 1 to 7, inclusive, of this
 294 act for the twelve-month period commencing on the date that the
 295 representative organization determines that such producer sold fewer
 296 than one thousand mattresses during the previous calendar year.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2012</i>	New section
Sec. 2	<i>October 1, 2012</i>	New section
Sec. 3	<i>October 1, 2012</i>	New section
Sec. 4	<i>October 1, 2012</i>	New section

Sec. 5	<i>October 1, 2012</i>	New section
Sec. 6	<i>October 1, 2012</i>	New section
Sec. 7	<i>October 1, 2012</i>	New section
Sec. 8	<i>October 1, 2012</i>	New section

Statement of Legislative Commissioners:

In section 5, "reply" was changed to "report" for accuracy.

ENV *Joint Favorable Subst.-LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: See Below

Municipalities	Effect	FY 13 \$	FY 14 \$
Various Municipalities	Savings	Potential Significant	Potential Significant

Explanation

The bill, which establishes a mattress stewardship program, would result in a savings to various municipalities associated with the removal of mattresses from the municipal solid waste (MSW) stream. The extent of the savings depends on the number of mattresses a town disposes and the amount (if any) the town currently charges for mattress disposal.

Under the bill, towns that currently charge residents a mattress disposal fee (through curbside collection or at a transfer station) would realize a smaller savings than those towns that do not charge any direct fee for mattress disposal. Currently, at least 54 municipalities charge a direct fee for residents to dispose mattresses; and at least 38 towns pay for disposal through municipal taxes¹.

These costs are based on the Department of Environmental Protection (DEP) 2011 survey, "CT DEP Survey for Used Mattress Management in Connecticut Final Report and Summary of Results", which estimated that the total number of mattresses collected by

¹ CT DEP Survey for Used Mattress Management in Connecticut Final Report and Summary of Results, June 13, 2011

municipalities statewide is 88,050.²

Municipalities with direct fees are covering some portion of their costs for mattress disposal and may realize the least amount of savings under the bill. Fees for mattress disposal range from \$15 - \$45 per mattress.

Towns that group mattresses with their other bulky or oversized MSW items at an average rate of more than \$75 per ton (“tip fee”) would realize the most savings under the bill, as the tonnage of MSW that is subject to the tip fee would be reduced. The reduction in MSW tonnage subject to tip fees is unknown at this time.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation, the number of mattresses diverted from the MSW stream, and the current method an individual municipality utilizes for mattress collection.

Sources: CT DEP Survey for Used Mattress Management in Connecticut: Final Report and Summary of Results. June 13, 2011

² The survey indicated that this figure was an “underestimation” because it did not capture all mattresses collected curbside.

OLR BILL ANALYSIS**sSB 89*****AN ACT ESTABLISHING A MATTRESS STEWARDSHIP PROGRAM.*****SUMMARY:**

This bill establishes a “mattress stewardship program” for managing post-consumer mattresses. It requires mattress producers to manage the program by establishing and participating in a mattress stewardship representative organization. The organization must develop a plan to, among other things, minimize public sector involvement in managing post-consumer mattresses. The plan must be submitted to the Department of Energy and Environmental Protection (DEEP) for approval. The program is funded through a mechanism based on producer market share.

The bill allows retailers to act as mattress collection points and provide consumers with information, establishes reporting requirements related to the program, and allows the DEEP commissioner to civilly enforce the program’s requirements. It provides immunity under certain circumstances to producers and the representative organization from claims of antitrust violations.

The bill also requires recycling to be the program’s preferred disposal method if it is technologically feasible and economically practical.

EFFECTIVE DATE: October 1, 2012

MATTRESS STEWARDSHIP PROGRAM***Mattress Producers***

The bill applies to “producers” (which includes manufacturers and renovators) of mattresses sold, offered for sale, or distributed in

Connecticut under the manufacturer's name or brand. It includes (1) the owner of a trademark or brand under which a mattress is sold, offered for sale, or distributed in the state and (2) any person who imports a mattress into the United States that is sold or offered for sale in Connecticut and manufactured or renovated by a person without a United States presence. The bill defines "renovator" as a person who alters mattresses for resale by replacing the ticking or filling, adding filling, rebuilding a mattress, or replacing components. A "brand" is a name, symbol, word, or mark that attributes a mattress to its producer.

Under the bill, a "mattress" is any resilient material or combination of materials enclosed by a ticking (outermost fabric or material layer) and intended or promoted for sleeping upon. "Mattress" includes (1) ticking-covered structures used to support the mattress composed of a constructed frame, foam, or box spring (a "foundation") and (2) any renovation. But it does not include any mattress pad, mattress topper, sleeping bag, pillow, car bed, carriage, basket, dressing table, stroller, playpen, infant carrier, lounge pad, crib bumper, and certain water beds, air mattresses, and upholstered furniture.

A "sale" is the transfer of title of a mattress for consideration including through a sales outlet, catalog, website, or similar electronic means.

Program Purposes and Establishment

By July 1, 2013, the bill requires (1) producers to create and join an organization to design, submit, and implement the mattress stewardship program (the "representative organization") and (2) the representative organization to submit a plan for establishing a state-wide mattress stewardship program to the DEEP commissioner for approval. The program must minimize public sector involvement in managing post-consumer mattresses by negotiating and executing agreements to collect, transport, reuse, renovate, recycle, burn for energy recovery, and dispose of post-consumer mattresses using environmentally sound management practices. It must:

1. provide free, convenient, and accessible statewide collection of post-consumer mattresses at collection rates and convenience at least equal to the collection programs available before the program;
2. provide suitable storage containers at permitted municipal transfer stations for segregated, discarded mattresses at no cost; and
3. include a funding mechanism approved by the producers participating in the representative organization that provides sufficient funding.

The mattress stewardship program must also provide producer-financed end-of-life management for mattresses that are no longer wanted or used for their manufactured purpose (a “discarded mattress”). This includes transportation from (1) persons in Connecticut with discarded mattresses generated in the state, other than a municipal solid waste transfer station, with at least 50 segregated, post-consumer discarded mattresses; (2) municipal transfer stations permitted to accept mattresses with at least 25 such mattresses; and (3) municipal transfer stations permitted to accept mattresses with at least one such mattress once per year.

Exemption

Producers that sell less than 1,000 mattresses in the state in a calendar year are exempt from participating in the program. The exemption begins when the representative organization determines that the producer sold fewer than 1,000 mattresses during the prior calendar year. It lasts for the 12-month period following such determination.

Plan Components

The representative organization’s plan must:

1. identify each participating producer, including each producer’s contact information on a form provided by the DEEP

-
- commissioner;
2. identify by producer the brands of mattresses sold in the state that are covered by the program;
 3. describe the program's funding mechanism (see below);
 4. establish program performance goals;
 5. identify transporters, nonmunicipal collection and aggregation points, processing facilities, and disposal facilities to be used in the program;
 6. describe consistency with the state's solid waste management plan; and
 7. detail the program's promotion of recycling post-consumer mattresses.

It must also describe (1) strategies to promote market growth of recycled products made from discarded mattresses' processed material and develop recycling infrastructure in Connecticut and (2) the public education program to create awareness and encourage participation, including informational materials for wholesalers, retailers, municipalities, and people with discarded mattresses. Under the bill, the "performance goal" is a metric proposed either by DEEP or the representative organization and approved by the DEEP commissioner to annually measure the program's performance in achieving continuous and meaningful improvement in the mattress recycling rate and other program goals.

Plan Approval and Implementation

The bill allows the DEEP commissioner to approve the plan if it meets the bill's requirements. The DEEP commissioner must determine whether to approve the plan within 90 days after its submission. The DEEP commissioner must post the plan on DEEP's website and solicit public comments before deciding whether to approve it.

If the plan is not approved, the DEEP commissioner must provide the representative organization with a notice of determination describing the reasons for disapproval. The organization must revise and resubmit the plan within 45 days of receiving the disapproval notice. The DEEP commissioner must review and either approve or disapprove the revised plan within 45 days of receiving it. The bill restricts resubmitting a revised plan for approval to no more than two occasions. It requires the DEEP commissioner to modify and approve a submitted plan if the representative organization fails to provide an acceptable plan.

The bill requires the representative organization to implement the mattress stewardship program within 60 days after plan approval. The DEEP commissioner must post a list of producers and their brands that comply with the bill's requirements on DEEP's website within 30 days of the program's establishment.

Changes to the Plan

The bill requires the representative organization to submit an amended plan to the DEEP commissioner when it proposes a substantial change to the program, such as changes to the (1) funding mechanism, (2) processing facilities used for discarded mattresses, and (3) system for collecting mattresses. The DEEP commissioner must post the amended plan on DEEP's website and solicit public comments before approving or disapproving it.

The representative organization must also notify the DEEP commissioner of any other program changes not requiring approval of an amended plan, such as (1) the program's transporters; (2) the producers and their brands entering or leaving the representative organization; and (3) contact information for producers, the representative organization, and significant program participants.

Funding

The bill requires the representative organization to be a nonprofit. Its fee structure must cover, but not exceed, the costs of developing the

plan and operating the mattress stewardship program.

The bill requires a funding mechanism based on a producer's annual market share. Under the bill, "market share" means the national sales of any mattress manufacturer as a percentage of total national sales of all mattress manufacturers. Market share is determined by nationally available market share data such as (1) the number of shipped units, (2) retail sales, (3) consumer surveys, and (4) information provided by producers. A producer with a market share of less than 0.1% is exempt from paying a share to operate the program. The bill allows the DEEP commissioner and the representative organization to agree on an alternative producer-financed funding mechanism.

Audits

Two years after program implementation, the representative organization must select an independent auditing firm to audit the mattress stewardship program. The DEEP commissioner must approve the firm. The audit must (1) determine if the funding mechanism is covering but not exceeding program operation costs, (2) review the representative organization's program data for accuracy, and (3) provide any other information requested by the DEEP commissioner. The representative organization must pay for the audit and maintain all program records for at least three years. The bill also allows the DEEP commissioner to request an audit but not more frequently than once per year.

RETAILERS AND PARTICIPANTS

The bill prohibits a person who sells or offers mattresses in Connecticut to a consumer from selling any mattress from a producer who is not compliant with the bill's provisions. A retailer can determine compliance by examining the participating producer list on DEEP's website. A retailer is not in violation of this provision if, on the date the mattress was ordered from the producer or its agent, the producer or mattress brand was listed on DEEP's website according to the bill's provisions.

The bill allows retailers to (1) volunteer as mattress collection sites and (2) provide information to consumers about recycling facilities and companies that collect or recycle mattresses.

It also prohibits any person with discarded mattresses participating in the program from charging for receipt of mattresses generated in the state but allows them to charge a fee for collecting mattresses. It allows them to restrict mattress acceptance by number, source, or physical condition.

The bill requires the owner or operator of any facility that is part of the mattress stewardship program to operate it according to law.

LIABILITY PROTECTION

Under the bill, to the extent a producer or the representative organization is exercising authority according to the bill's provisions, it is immune from liability for any antitrust or unfair trade practice claim based on a violation of antitrust law.

REPORTS

Annually by October 15, the representative organization must submit a report to the DEEP commissioner on a form he prescribes. DEEP must post the report on its website. The report must include the:

1. tonnage of mattresses collected from municipal transfer stations, retailers, and all others;
2. tonnage of mattresses diverted for recycling;
3. weight of mattresses recycled, by the weight of each type of component sold as a commodity to secondary markets; and
4. weight of mattresses sent for disposal at waste-to-energy facilities, landfills, and other facilities.

It must also include (1) public education materials and methods used to support the program, (2) an evaluation of methods and processes used to achieve program performance goals, (3)

recommendations for program changes, and (4) any other information the DEEP commissioner requests.

Within three years of the plan's approval, the DEEP commissioner must submit a report to the Environment Committee that (1) evaluates the program and (2) establishes goals for diverting mattresses from solid waste facilities and recycling mattresses that account for technical and economic feasibility.

COMMITTEE ACTION

Environment Committee

Joint Favorable

Yea 22 Nay 7 (03/14/2012)