



General Assembly

February Session, 2012

Raised Bill No. 89

LCO No. 862

00862_____ENV

Referred to Committee on Environment

Introduced by:
(ENV)

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 reply, in accordance with section 11-4a of
275 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 Purpose:

To establish a mattress stewardship program that will provide for post-consumer collection and recycling of mattresses throughout the state.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]