



General Assembly

February Session, 2012

**Substitute Bill No. 89**

\*       SB00089ENV      031512      \*

**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*