
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)