



General Assembly

January Session, 2013

Raised Bill No. 6437

LCO No. 3056



Referred to Committee on ENVIRONMENT

Introduced by:
(ENV)

AN ACT CONCERNING 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, 2013*) For the purposes of this
2 section and sections 2 to 7, 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 political subdivision of the state, any
8 mattress retailer, any permitted transfer station, any health care
9 facility, any educational facility or any commercial or nonprofit
10 lodging establishment that possesses a discarded mattress that was
11 discarded in this state. "Covered entity" does not include any
12 renovator, refurbisher or any person who only transports a discarded
13 mattress;

14 (4) "Department" means the Department of Energy and

15 Environmental Protection;

16 (5) "Discarded mattress" means any mattress that a consumer
17 discarded, intends to discard or abandoned;

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

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

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

39 (9) "Mattress core" means the principal support system that is
40 present in a mattress, including, but not limited to, springs, foam, air
41 bladder, water bladder or resilient filling;

42 (10) "Mattress recycling council" or "council" means the nonprofit
43 organization created by producers who have majority representation
44 of the mattress industry to design, submit and implement the mattress

45 stewardship program described in section 2 of this act;

46 (11) "Mattress stewardship fee" means the amount added to the
47 purchase price of a mattress sold in this state that is necessary to cover
48 the cost of collecting, transporting and processing discarded mattresses
49 by the council pursuant to the mattress stewardship program;

50 (12) "Mattress stewardship program" or "program" means the state-
51 wide program described in section 2 of this act and implemented
52 pursuant to the mattress stewardship plan;

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

56 (14) "Performance goal" means a metric proposed by the council and
57 approved by the commissioner, to measure, on an annual basis, the
58 performance of the mattress stewardship program, taking into
59 consideration technical and economic feasibilities, in achieving
60 continuous, meaningful improvement in improving the rate of
61 mattress recycling in the state and any other specified goal of the
62 program;

63 (15) "Producer" means any person who manufactures or renovates a
64 mattress that is sold, offered for sale or distributed in the state under
65 the producer's own name or brand. "Producer" includes (A) the owner
66 of a trademark or brand under which a mattress is sold, offered for sale
67 or distributed in this state, whether or not such trademark or brand is
68 registered in this state, and (B) any person who imports a mattress into
69 the United States that is sold or offered for sale in this state and that is
70 manufactured or renovated by a person who does not have a presence
71 in the United States;

72 (16) "Recycling" means any process in which discarded mattresses,
73 components and by-products may lose their original identity or form
74 as they are transformed into new, usable or marketable materials.

75 "Recycling" does not include the use of incineration for energy
76 recovery;

77 (17) "Renovate" or "renovation" means altering a mattress for the
78 purpose of resale by sterilization and any one, or a combination of, the
79 following: Replacing the ticking or filling, adding additional filling, or
80 replacing components with new or recycled materials. "Renovate" or
81 "renovation" does not include (A) the stripping of a mattress of its
82 ticking or filling without adding new material, (B) the sanitization or
83 sterilization of a mattress without otherwise altering the mattress, or
84 (C) the altering of a mattress by a renovator when a person retains the
85 altered mattress for personal use, in accordance with regulations of the
86 Department of Consumer Protection;

87 (18) "Renovator" means any person who renovates discarded
88 mattresses for the purpose of reselling such mattresses to consumers;

89 (19) "Retailer" means any person who sells mattresses in this state or
90 offers mattresses in this state to a consumer;

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

93 (21) "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 (22) "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 (23) "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; and

104 (24) "Upholstery material" means all material, loose or attached,
105 between the ticking and the core of a mattress.

106 Sec. 2. (NEW) (*Effective October 1, 2013*) (a) On or before July 1, 2014,
107 each producer shall join the mattress recycling council and such
108 council shall submit a plan, for the Commissioner of Energy and
109 Environmental Protection's approval, to establish a state-wide mattress
110 stewardship program, as described in this subsection. Retailers may
111 participate in said council. Such mattress stewardship program shall,
112 to the extent it is technologically feasible and economically practical:
113 (1) Minimize public sector involvement in the management of
114 discarded mattresses; (2) provide for free, convenient and accessible
115 state-wide opportunities for the receipt of discarded mattresses from
116 any person in the state with a discarded mattress that was discarded in
117 the state; (3) through contracts or agreements with haulers, processing
118 facilities and participating covered entities, provide for the free,
119 convenient and accessible state-wide collection of discarded mattresses
120 from participating covered entities that accumulated and segregated a
121 minimum of thirty discarded mattresses for collection at one time; (4)
122 provide for free collection of discarded mattresses from municipal
123 transfer stations that accumulated and segregated fewer than thirty
124 mattresses, provided the transfer stations require such collection due
125 to space or permit requirements; (5) provide for council-financed end-
126 of-life management for discarded mattresses collected pursuant to
127 subdivisions (3) and (4) of this subsection; (6) provide suitable storage
128 containers at, or make other mutually agreeable storage and transport
129 arrangements for, permitted municipal transfer stations for segregated,
130 discarded mattresses, at no cost to such municipality, provided such
131 municipal transfer station makes space available for such purpose and
132 imposes no fee for placement of such storage container on the
133 municipal transfer station's premises; and (7) include a fee that is
134 sufficient to cover the costs of operating and administering the
135 program.

136 (b) The plan submitted pursuant to subsection (a) of this section

137 shall: (1) Identify each producer participating in the program; (2)
138 describe the fee structure for the program; (3) establish performance
139 goals for the first two years of the program; (4) identify proposed
140 facilities to be used by the program; (5) detail how the program will
141 promote the recycling of discarded mattresses; and (6) include a
142 description of the public education program.

143 (c) The council shall establish and implement a fee structure that
144 covers, but does not exceed, the costs of developing the plan described
145 in subsection (b) of this section, operating and administering the
146 program described in subsection (a) of this section and maintaining a
147 financial reserve sufficient to operate the program over a multi-year
148 period of time in a fiscally prudent and responsible manner. The
149 council shall maintain all records relating to the program for a period
150 of not less than three years.

151 (d) Pursuant to the program, recycling shall be preferred over any
152 other disposal method for mattresses, to the extent that recycling is
153 technologically feasible and economically practical.

154 (e) The Commissioner of Energy and Environmental Protection shall
155 approve the plan for the establishment of the mattress stewardship
156 program, provided such plan meets the requirements of subsections
157 (a) to (d), inclusive, of this section. Not later than ninety days after
158 submission of the plan pursuant to this section, the commissioner shall
159 make a determination whether to approve the plan. Prior to making
160 such determination, the commissioner shall post the plan on the
161 department's Internet web site and solicit public comments on the
162 plan. Such solicitation shall not be conducted pursuant to chapter 54 of
163 the general statutes. In the event that the commissioner disapproves
164 the plan because it does not meet the requirements of subsections (a) to
165 (d), inclusive, of this section, the commissioner shall describe the
166 reasons for the disapproval in a notice of determination that the
167 commissioner shall provide to the council. The council shall revise and
168 resubmit the plan to the commissioner not later than forty-five days

169 after receipt of notice of the commissioner's disapproval notice. Not
170 later than forty-five days after receipt of the revised plan, the
171 commissioner shall review and approve or disapprove the revised
172 plan, providing a notice of determination. The council may resubmit a
173 revised plan to the commissioner for approval on not more than two
174 occasions. If the council fails to submit a plan that is acceptable to the
175 commissioner because it does not meet the requirements of subsections
176 (a) to (d), inclusive, of this section, the commissioner shall modify a
177 submitted plan to make it conform to the requirements of subsections
178 (a) to (d), inclusive, of this section, and approve it. Not later than one
179 hundred twenty days after the approval of a plan pursuant to this
180 section, or one hundred eighty days, in the case of a plan modified by
181 the commissioner, the council shall implement the mattress
182 stewardship program.

183 (f) (1) The council shall submit any proposed substantial change to
184 the program to the Commissioner of Energy and Environmental
185 Protection for approval. For the purposes of this subdivision,
186 "substantial change" means: (A) A change in the processing facilities to
187 be used for discarded mattresses collected pursuant to the program, or
188 (B) a material change to the system for collecting mattresses.

189 (2) Not later than October 1, 2016, the council shall submit updated
190 performance goals for approval by the commissioner that are based on
191 the experience of the program during the first two years of the
192 program.

193 (g) The council shall notify the Commissioner of Energy and
194 Environmental Protection of other material changes to the program on
195 an ongoing basis, without resubmission of the plan to the
196 commissioner for approval. Such changes shall include, but not be
197 limited to, a change in the composition, officers or contact information
198 of the council.

199 (h) On or before July 1, 2014, and every two years thereafter, the

200 council shall propose a mattress stewardship fee for all mattresses sold
201 in this state except crib and bassinette mattresses. The council may
202 propose a change to the mattress stewardship fee more frequently than
203 once every two years if the council determines such change is needed
204 to avoid funding shortfalls or excesses. Any proposed mattress
205 stewardship fee shall be reviewed by an auditor to assure that such
206 assessment does not exceed the cost to fund the mattress stewardship
207 program described in subsection (a) of this section and to maintain
208 financial reserves sufficient to operate said program over a multi-year
209 period in a fiscally prudent and responsible manner. Not later than
210 sixty days after the council proposes a mattress stewardship fee, the
211 auditor shall render an opinion to the Department of Energy and
212 Environmental Protection as to whether the proposed mattress
213 stewardship fee is reasonable to achieve the goals set forth in this
214 section. If the auditor concludes that the mattress stewardship fee is
215 reasonable, then the proposed fee shall go into effect. If the auditor
216 concludes that the mattress stewardship fee is not reasonable, the
217 auditor shall provide the council with written notice explaining the
218 auditor's opinion. Not later than fourteen days after the council's
219 receipt of the auditor's opinion, the council may either propose a new
220 mattress stewardship fee or provide written comments on the auditor's
221 opinion. If the auditor concludes that the fee is not reasonable, the
222 Department of Energy and Environmental Protection shall decide,
223 based on the auditor's opinion and any comments provided by the
224 council, whether to approve the proposed mattress stewardship fee.
225 Such auditor shall be selected by the council. The cost of any work
226 performed by such auditor pursuant to the provisions of this
227 subsection and subsection (k) of this section shall be funded by the
228 mattress stewardship fee described in this subsection.

229 (i) On and after the implementation of the mattress stewardship
230 program, the mattress stewardship fee, established pursuant to
231 subsection (a) of this section and described in subsection (h) of this
232 section, shall be added to the cost of all mattresses sold to retailers and

233 distributors in this state by each producer. On and after such
234 implementation date, each retailer or distributor, as applicable, shall
235 add the amount of such fee to the purchase price of all mattresses sold
236 in this state. In each transaction described above, the fee shall be
237 clearly visible on the invoice or functionally equivalent billing
238 document provided by the seller to the buyer as a separate line item
239 and shall be accompanied by a brief description of the fee. The council
240 may, subject to the commissioner's approval, establish an alternative,
241 practicable means of collecting or remitting such fee. No producer who
242 fails to participate in such program shall sell mattresses in the state.

243 (j) Not later than October fifteenth of each year, the council shall
244 submit an annual report to the Commissioner of Energy and
245 Environmental Protection, on a form prescribed by the commissioner.
246 The commissioner shall post such annual report on the department's
247 Internet web site. Such report shall include: (1) The tonnage of
248 mattresses collected pursuant to the program from: (A) Municipal
249 transfer stations, (B) retailers, and (C) all other covered entities; (2) the
250 tonnage of mattresses diverted for recycling; (3) the weight of mattress
251 materials recycled, as indicated by the weight of each of the
252 commodities sold to secondary markets; (4) the weight of mattress
253 materials sent for disposal at each of the following: (A) Waste-to-
254 energy facilities, (B) landfills, and (C) any other facilities; (5) a
255 summary of the public education that supports the program; (6) an
256 evaluation of the effectiveness of methods and processes used to
257 achieve performance goals of the program; and (7) recommendations
258 for any changes to the program.

259 (k) Two years after the implementation of the program and every
260 three years thereafter, or upon the request of the Commissioner of
261 Energy and Environmental Protection but not more frequently than
262 once a year, the council shall cause an audit of the program to be
263 conducted by the auditor described in subsection (h) of this section.
264 Such audit shall review the accuracy of the council's data concerning
265 the program and provide any other information requested by the

266 commissioner, consistent with the requirements of this section,
267 provided such request does not require the disclosure of any
268 proprietary information or trade or business secrets. Such audit shall
269 be paid for by the council. The council shall maintain all records
270 relating to the program for not less than three years.

271 Sec. 3. (NEW) (*Effective July 1, 2014*) Upon implementation of the
272 mattress stewardship program described in section 2 of this act, no
273 covered entity that participates in such program shall charge for the
274 receipt of discarded mattresses that are discarded in this state
275 provided covered entities may charge a fee for providing the service of
276 collecting mattresses and may restrict the acceptance of mattresses by
277 number, source or physical condition.

278 Sec. 4. (NEW) (*Effective October 1, 2013*) Not later than three years
279 after the approval of the mattress stewardship plan pursuant to section
280 2 of this act, the Commissioner of Energy and Environmental
281 Protection shall submit a report, in accordance with section 11-4a of the
282 general statutes, to the joint standing committee of the General
283 Assembly having cognizance of matters relating to the environment.
284 Such report shall provide an evaluation of the mattress stewardship
285 program, establish a goal for the amount of discarded mattresses
286 managed under the program and a separate goal for the recycling of
287 such mattresses, taking into consideration technical and economic
288 feasibilities.

289 Sec. 5. (NEW) (*Effective October 1, 2013*) Each producer and the
290 council shall be immune from liability for any claim of a violation of
291 antitrust law or unfair trade practice, if such conduct is a violation of
292 antitrust law, to the extent such producer or council is exercising
293 authority pursuant to the provisions of sections 1 to 7, inclusive, of this
294 act.

295 Sec. 6. (NEW) (*Effective October 1, 2013*) (a) The Commissioner of
296 Energy and Environmental Protection may seek civil enforcement of

297 the provisions of sections 2 and 3 of this act pursuant to chapter 439 of
298 the general statutes.

299 (b) Whenever, in the judgment of the commissioner, any person has
300 engaged in or is about to engage in any act, practice or omission that
301 constitutes, or will constitute, a violation of any provision of section 2
302 or 3 of this act, the Attorney General may, at the request of the
303 commissioner, bring an action in the superior court for the judicial
304 district of New Britain for an order enjoining such act, practice or
305 omission. Such order may require remedial measures and direct
306 compliance with the provisions of section 2 or 3 of this act. Upon a
307 showing by the commissioner that such person has engaged in or is
308 about to engage in any such act, practice or omission, the court may
309 issue a permanent or temporary injunction, restraining order or other
310 order, as appropriate.

311 (c) Any action brought by the Attorney General pursuant to this
312 section shall have precedence in the order of trial, as provided in
313 section 52-191 of the general statutes.

314 Sec. 7. (NEW) (*Effective October 1, 2013*) In the event that another
315 state implements a mattress recycling program, the council may
316 collaborate with such state to conserve efforts and resources used in
317 carrying out the mattress stewardship program, provided such
318 collaboration is consistent with the requirements of sections 1 to 6,
319 inclusive, of this act.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2013</i>	New section
Sec. 2	<i>October 1, 2013</i>	New section
Sec. 3	<i>July 1, 2014</i>	New section
Sec. 4	<i>October 1, 2013</i>	New section
Sec. 5	<i>October 1, 2013</i>	New section
Sec. 6	<i>October 1, 2013</i>	New section
Sec. 7	<i>October 1, 2013</i>	New section

Statement of Purpose:

To establish a mattress stewardship program that will reduce the cost to municipalities of handling discarded mattresses.

[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.]