



General Assembly

Substitute Bill No. 6437

January Session, 2013



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,
8 mattress retailer, permitted transfer station, waste-to-energy facility,
9 health care facility, educational facility, correctional facility, military
10 base or commercial or nonprofit lodging establishment that possesses a
11 discarded mattress that was discarded in this state. "Covered entity"
12 does not include any renovator, refurbisher or any person who only
13 transports a discarded 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 ticking, used alone or in combination with
30 other products, and that is intended for or promoted for sleeping
31 upon. "Mattress" includes any foundation and any renovated mattress.
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 or created by any trade association
44 that represents producers who account for a majority of mattress
45 production in the United States to design, submit and implement the
46 mattress stewardship program described in section 2 of this act;

47 (11) "Mattress stewardship fee" means the amount added to the
48 purchase price of a mattress sold in this state that is necessary to cover

49 the cost of collecting, transporting and processing discarded mattresses
50 by the council pursuant to the mattress stewardship program;

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

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

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

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

73 (16) "Recycling" means any process in which discarded mattresses,
74 components and by-products may lose their original identity or form
75 as they are transformed into new, usable or marketable materials.
76 "Recycling" does not include the use of incineration for energy
77 recovery;

78 (17) "Renovate" or "renovation" means altering a mattress for the
79 purpose of resale including any one, or a combination of, the

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

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

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

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

94 (21) "Sale" means the transfer of title of a mattress for consideration,
95 including, but not limited to, the use of a sales outlet, catalog, Internet
96 web site or similar electronic means;

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

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

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

107 Sec. 2. (NEW) (*Effective October 1, 2013*) (a) On or before July 1, 2014,
108 each producer shall join the mattress recycling council and by said date

109 such council shall submit a plan, for the Commissioner of Energy and
110 Environmental Protection's approval, to establish a state-wide mattress
111 stewardship program, as described in this subsection. Retailers may
112 participate in said council. Such mattress stewardship program shall,
113 to the extent it is technologically feasible and economically practical:
114 (1) Minimize public sector involvement in the management of
115 discarded mattresses; (2) provide for free, convenient and accessible
116 state-wide opportunities for the receipt of discarded mattresses from
117 any person in the state with a discarded mattress that was discarded in
118 the state, including, but not limited to, participating covered entities
119 that accumulate and segregate a minimum of fifty discarded
120 mattresses for collection at one time and municipal transfer stations
121 that discard a minimum of thirty mattresses at one time; (3) provide
122 for free collection of discarded mattresses from municipal transfer
123 stations that accumulate and segregate fewer than thirty mattresses,
124 provided the transfer stations require such collection due to space or
125 permit requirements; (4) provide for council-financed end-of-life
126 management for discarded mattresses collected pursuant to
127 subdivisions (2) and (3) of this subsection; (5) 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 (6) include a mattress
134 stewardship fee that is sufficient to cover the costs of operating and
135 administering the 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, and provide a notice of determination to the council. The council
173 may resubmit a revised plan to the commissioner for approval on not
174 more than two occasions. If the council fails to submit a plan that is
175 acceptable to the commissioner because it does not meet the

176 requirements of subsections (a) to (d), inclusive, of this section, the
177 commissioner shall modify a submitted plan to make it conform to the
178 requirements of subsections (a) to (d), inclusive, of this section, and
179 approve it. Not later than one hundred twenty days after the approval
180 of a plan pursuant to this section, or one hundred eighty days, in the
181 case of a plan modified by the commissioner, the council shall
182 implement the mattress 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. If the
189 commissioner does not disapprove a proposed substantial change
190 within ninety days of receipt of notification of such proposed
191 substantial change, such proposed substantial change shall be deemed
192 approved.

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

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

203 (h) On or before July 1, 2014, and every two years thereafter, the
204 council shall propose a mattress stewardship fee for all mattresses sold
205 in this state except crib and bassinette mattresses. The council may
206 propose a change to the mattress stewardship fee more frequently than
207 once every two years if the council determines such change is needed

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

233 (i) On and after the implementation of the mattress stewardship
234 program, the mattress stewardship fee, established pursuant to
235 subsection (a) of this section and described in subsection (h) of this
236 section, shall be added to the cost of all mattresses sold to retailers and
237 distributors in this state by each producer. On and after such
238 implementation date, each retailer or distributor, as applicable, shall
239 add the amount of such fee to the purchase price of all mattresses sold
240 in this state. In each transaction described above, the fee shall appear
241 on the invoice and shall be accompanied by a brief description of the

242 fee. The council may, subject to the commissioner's approval, establish
243 an alternative, practicable means of collecting or remitting such fee.
244 Any producer who fails to participate in such program shall not sell
245 mattresses in this state.

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

262 (k) Two years after the implementation of the program and every
263 three years thereafter, or upon the request of the Commissioner of
264 Energy and Environmental Protection but not more frequently than
265 once a year, the council shall cause an audit of the program to be
266 conducted by an auditor as described in subsection (h) of this section.
267 Such audit shall review the accuracy of the council's data concerning
268 the program and provide any other information requested by the
269 commissioner, consistent with the requirements of this section,
270 provided such request does not require the disclosure of any
271 proprietary information or trade or business secrets. Such audit shall
272 be paid for by the council. The council shall maintain all records
273 relating to the program for not less than three years.

274 Sec. 3. (NEW) (*Effective July 1, 2014*) Upon implementation of the

275 mattress stewardship program described in section 2 of this act, any
276 covered entity that participates in such program shall not charge for
277 the receipt of discarded mattresses that are discarded in this state
278 provided covered entities may charge a fee for providing the service of
279 collecting mattresses and may restrict the acceptance of mattresses by
280 number, source or physical condition.

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

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

298 Sec. 6. (NEW) (*Effective October 1, 2013*) (a) The Commissioner of
299 Energy and Environmental Protection may seek civil enforcement of
300 the provisions of sections 2 and 3 of this act pursuant to chapter 439 of
301 the general statutes.

302 (b) Whenever, in the judgment of the commissioner, any person has
303 engaged in or is about to engage in any act, practice or omission that
304 constitutes, or will constitute, a violation of any provision of section 2
305 or 3 of this act, the Attorney General may, at the request of the
306 commissioner, bring an action in the superior court for the judicial

307 district of New Britain for an order enjoining such act, practice or
308 omission. Such order may require remedial measures and direct
309 compliance with the provisions of section 2 or 3 of this act. Upon a
310 showing by the commissioner that such person has engaged in or is
311 about to engage in any such act, practice or omission, the court may
312 issue a permanent or temporary injunction, restraining order or other
313 order, as appropriate.

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

317 Sec. 7. (NEW) (*Effective October 1, 2013*) In the event that another
318 state implements a mattress recycling program, the council may
319 collaborate with such state to conserve efforts and resources used in
320 carrying out the mattress stewardship program, provided such
321 collaboration is consistent with the requirements of sections 1 to 6,
322 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

ENV *Joint Favorable Subst.*