

2012 -- S 2399

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

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A N A C T

RELATING TO HEALTH AND SAFETY - PRODUCERS RESPONSIBILITY FOR
DISCARDED PRODUCTS

Introduced By: Senators Ruggerio, Sosnowski, Goodwin, Lombardo, and Walaska

Date Introduced: February 15, 2012

Referred To: Senate Environment & Agriculture

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 23 of the General Laws entitled "HEALTH AND SAFETY" is hereby
2 amended by adding thereto the following chapter:

3 CHAPTER 87

4 RESPONSIBLE RECYCLING, REUSE AND DISPOSAL OF MATTRESSES

5 **23-87-1. Purpose.** – The purposes of this chapter are:

6 (1) To establish a manufacturer financed system for the collection, recycling, and reuse
7 for discarded mattresses in Rhode Island.

8 (2) To develop a comprehensive strategy, with the participation of state agencies,
9 producers, retailers, and consumers for waste prevention and reduction of discarded mattresses in
10 the state, which addresses the collection, recycling and reuse of mattresses in a safe and
11 environmentally sound manner;

12 (3) To promote the development of infrastructure for the reuse and recycling of discarded
13 mattresses;

14 (4) To minimize costs incurred by Rhode Island municipalities to collect, dispose of, or
15 recycle mattresses discarded by residents;

16 (5) To eliminate waste generated in the state from disposal of discarded mattresses from
17 landfill and other forms of disposal; and

18 (6) To encourage the design of products that are less toxic, more durable and more

1 [recyclable.](#)

2 **23-87-2. Findings.** – The general assembly hereby finds and declares that:

3 (1) It is in the best interest of this state for providers of mattresses sold in Rhode Island to
4 take responsibility for reducing the environmental and health impacts of a mattress over its life
5 cycle, from design to management after the end of a mattress's useful life;

6 (2) It is in the best interest of this state to determine a process for minimizing costs
7 incurred by Rhode Island's cities and towns for the management of discarded mattresses.

8 (3) It is in the best interest of this state to institute a mattress stewardship system to
9 encourage the design and manufacture of mattresses that are more resource-efficient, more
10 recyclable and less toxic; and

11 (4) It is in the best interest of this state for producers to finance and manage programs
12 within a statewide product stewardship system that serves urban and rural areas in Rhode Island
13 and provides free, convenient opportunities for the collection, transportation, recovery and safe
14 management of discarded products.

15 **23-87-3. Definitions.** – As used in this chapter, the following words shall, unless the
16 context clearly requires otherwise, have the following meanings:

17 (1) "Brand" means a name, symbol, word or mark that identifies a product and attributes
18 the product to the owner of the brand as the producer.

19 (2) "Covered entity" means any person with a discarded product as set forth in this
20 chapter.

21 (3) "Department" means the Rhode Island department of environmental management.

22 (4) "Director" means the director of the Rhode Island department of environmental
23 management or his or her designee.

24 (5) "Discarded mattress" means a mattress no longer wanted by its owner that is
25 discarded or is intended to be discarded.

26 (6) "Disposition rate" means a quantitative measure that establishes on an annual basis
27 the percentage of discarded mattresses that are recycled, reused or properly disposed of, including
28 energy recovery, relative to the total amount collected or total amount collected per capita in a
29 product stewardship program.

30 (7) "Environmentally sound management practices" means policies as defined by rules
31 adopted pursuant to section 23-87-10 that are implemented by a producer or a stewardship
32 organization to ensure compliance with applicable laws and that address issues such as adequate
33 record keeping, tracking and documenting the fate of materials within this state and beyond, on-
34 site operations, security of facilities and materials, worker health and safety requirements,

1 environmental protection, closure plans, adequate insurance and financial assurances.

2 (8) "Mattress" means a large thick pad filled with resilient material and often
3 incorporating coiled springs, used as a bed or part of a bed and includes standard innerspring
4 mattresses, foam mattresses, box springs and mattresses used in conjunction with futon frames.

5 (9) "Orphan product" means a product that lacks a brand, for which the producer is no
6 longer in business and has no successor in interest or for which the department of environmental
7 management cannot identify a producer.

8 (10) "Performance goal" means a metric established by a producer or the department of
9 environmental management to measure, on an annual basis, the performance of a product
10 stewardship program in addressing recycling, reuse, safe disposal, environmental impacts or
11 health impacts related to a product.

12 (11) "Person" means an individual, trust, firm, joint stock company, corporation
13 (including a government corporation), partnership, association, the federal government or any
14 agency or subdivision thereof, a state, municipality, commission, political subdivision of a state,
15 or any interstate body.

16 (12) "Producer" means a person:

17 (i) Who manufactures a mattress and who sells, offers for sale or distributes that product
18 in Rhode Island under the manufacturer's own name or brand;

19 (ii) If paragraph (i) of this subsection does not apply, who is not the manufacturer of the
20 mattress, but is the owner or licensee of a trademark or brand under which a mattress is sold or
21 distributed in Rhode Island, whether or not the trademark is registered; or

22 (iii) If paragraphs (i) and (ii) of this subsection do not apply, who imports the product
23 into Rhode Island for sale or distribution.

24 (13) "Product" means mattresses as defined in subdivision (8) of this section.

25 (14) "Product goal" means any change in the design and manufacture of a mattress that
26 reduces or has the potential to reduce environmental or health impacts.

27 (15) "Product stewardship plan" means a statewide plan that describes a program for the
28 collection, transportation, recycling, reuse and disposal of discarded mattresses and any related
29 performance goals and product goals and that is developed and provided for by a producer or
30 group of producers.

31 (16) "Product stewardship program" means a statewide program financed and managed
32 by a producer or group of producers that is based on an approved product stewardship plan and
33 that addresses the environmental or health impacts of a product over the entire life cycle of that
34 product.

1 (17) “Recycling” means any process by which discarded products, components and
2 byproducts are transformed into new, usable or marketable materials in a manner in which the
3 original products may lose their identity but does not include energy recovery or energy
4 generation by means of combusting discarded products, components and by-products with or
5 without other waste products.

6 (18) “Retailer” means any person that offers new products for sale at retail through any
7 means, including, but not limited to, remote offerings such as sales outlets, catalogs or the
8 Internet.

9 (19) “Reuse” means the return of a product into the economic stream for use in the same
10 kind of application as originally intended, without a change in the product’s form or function.

11 (20) “Sell” or “sale” means any transfer of title for consideration, including, but not
12 limited to, remote sales conducted through sales outlets, catalogs or the Internet or any similar
13 electronic means, but excluding lease arrangements.

14 (21) “Statewide product stewardship system” means the statewide system of product
15 stewardship programs established and managed by producers or stewardship organizations that
16 are overseen by the department of environmental management.

17 (22) “Stewardship organization” means a corporation, nonprofit or other legal entity
18 appointed by a producer or group of producers to act as an agent on behalf of the producer to
19 administer a product stewardship program.

20 **23-87-4. Rulemaking.** -- The department may adopt rules as necessary to implement the
21 provisions of this chapter.

22 **23-87-5. Product stewardship rulemaking for mattresses.** – (a) The department shall
23 develop and implement a statewide product stewardship system for mattresses:

24 (b) In developing and implementing the statewide product stewardship system under this
25 section, the department shall collaborate to the extent practicable with the federal government,
26 other states, state agencies, local governments, producers, stewardship organizations, the retail
27 industry, nonprofits, the solid waste industry, environmental groups and covered entities.

28 (c) To the extent practicable, the department shall consult and coordinate with other states
29 to achieve consistency in the development and implementation of the statewide product
30 stewardship system.

31 **23-87-6. Adoption of product specific rules.** - (a) The department shall adopt product-
32 specific rules to address the implementation of product stewardship programs for mattresses.

33 (b)(1) Prior to adopting product-specific rules, the department shall appoint an advisory
34 committee to advise on the development of product-specific rules. The committee shall have at

1 least nine (9) members and, at a minimum, one member shall represent each of the following
2 groups:

- 3 (i) Producers;
- 4 (ii) Local governments;
- 5 (iii) Environmental groups;
- 6 (iv) The solid waste or recycling industry;
- 7 (v) The retail industry; and
- 8 (vi) Consumers or covered entities.

9 (2) To encourage coordination with other states, the department may invite
10 representatives from other states to participate in the committee proceedings as nonmembers.

11 (c) Any product-specific rules developed and adopted pursuant to this section shall
12 address the following:

- 13 (1) Definition of covered entities;
- 14 (2) Environmentally sound management practices;
- 15 (3) Performance goals and product goals as provided in section 23-87-14;
- 16 (4) The necessity for a disposal ban as determined by the specific characteristics of the
17 product;
- 18 (5) Implementation date for the product stewardship program;
- 19 (6) Department's administrative fees; and
- 20 (7) Any other requirement directly relevant to the management of a product under a
21 product stewardship program.

22 (d) The department may, after consultation with the advisory committee established in
23 section 23-87-6, allow for the implementation of a voluntary product stewardship program for
24 mattresses in lieu of the adoption and implementation of product specific rules if a producer or
25 group of producers is able to demonstrate the following, in writing, to the department:

- 26 (1) Its ability to meet aggressive collection and recycling goals;
- 27 (2) Its ability to provide broad coverage and availability of collection and recycling
28 opportunities;
- 29 (3) Its ability to provide for aggressive education and marketing of the program;
- 30 (4) Its ability to undertake comprehensive reporting on the success of the program;
- 31 (5) Its ability to succeed based upon past performance;
- 32 (6) Its ability to provide collection and recycling opportunities in a manner that will be as
33 effective as a program operating under product specific rules promulgated by the department; and
- 34 (7) Its ability to identify a single point-of-contact.

1 The department shall explain, in writing, the reasons for its decision to allow or not allow
2 the implementation of a voluntary product stewardship program.

3 **23-87-7. Responsibilities of producers.** -- (a) Producers of products specified in section
4 23-87-5 for which rules are adopted pursuant to section 23-87-6, shall establish product
5 stewardship programs for the products. Every producer shall:

6 (1) Operate, either individually or collectively with other producers, a product
7 stewardship program; or

8 (2) Enter into an agreement with one or more stewardship organizations to operate, on the
9 producer's behalf, a product stewardship program; and

10 (3) Work cooperatively with the department, retailers, consumers, municipalities and the
11 Rhode Island resource recovery corporation to implement a product stewardship program.

12 (b) Product stewardship programs shall be provided free of charge to covered entities
13 when a product is sold or when the discarded products are delivered or collected for reuse,
14 recycling or disposal throughout the calendar year. All discarded products collected for a program
15 shall be reused or recycled unless the applicable product-specific rule provides that such products
16 must be properly disposed of. A program shall meet or exceed the requirements for the collection
17 of products set forth in the product stewardship plan required by section 23-87-9.

18 (c) Producers shall pay administrative, operational and capital costs associated with the
19 product stewardship programs, including costs of collection, transportation, recycling, reuse and
20 disposal of the products and their components. Producers shall provide adequate insurance and
21 financial assurances for operation of the product stewardship programs.

22 (d) Product stewardship programs shall meet or exceed the environmentally sound
23 management practices provided in the applicable product-specific rules as well as any other
24 applicable federal, state or local requirements regarding the management of the collected
25 products.

26 (e) A producer may not sell or offer for sale in Rhode Island any mattress unless the
27 mattress or, where appropriate, the mattress package or container, is labeled with a brand that is
28 permanently affixed and readily visible and the brand is included in an approved product
29 stewardship plan.

30 (f) All product stewardship programs shall operate in accordance with:

31 (1) The product stewardship plan as approved by the department; and

32 (2) Sections 23-87-1 through 23-87-18 of this chapter and any applicable rules adopted
33 pursuant to sections 23-87-1 through 23-87-18 of this chapter.

34 (g) Product stewardship programs shall include an education and outreach component to

1 promote the use of the program and to inform covered entities of available collection options.
2 This information shall be provided to covered entities, retailers and other interested parties.

3 **23-87-8. Requirement for product stewardship plan. --** (a) Producers shall submit a
4 product stewardship plan to the department that addresses the following:

5 (1) Information about participating producers, including, but not limited to:
6 (i) Contact information for producers;
7 (ii) Contact information for the individual or entity submitting the plan;
8 (iii) A description of any stewardship organization that operates the product stewardship
9 program; and

10 (iv) Producers' mattresses and associated brands covered by the product stewardship
11 program and product stewardship plan;

12 (2) Information on performance goals and product goals, including, but not limited to:
13 (i) A detailed description of annual performance goals and, if applicable, product goals;
14 and
15 (ii) Compliance with annual performance goals and, if applicable, product goals;

16 (3) Collection system information, including but not limited to, how the product
17 stewardship program will be available, convenient, accessible and free of charge for all covered
18 entities in urban and rural areas statewide;

19 (4) Implementation of environmentally sound management practices for the collection,
20 transportation, recycling, reuse and disposal of discarded mattresses;

21 (5) Management of collected products, including, but not limited to:
22 (i) How the collected mattresses will be recycled, reused or, where required by the
23 product-specific rules, properly disposed of; and
24 (ii) How all residuals that cannot be recycled or reused will be properly managed;

25 (6) Financial information, including, but not limited to:
26 (i) How the product stewardship program will be financed;
27 (ii) The mechanism for securing and disbursing funds to cover administrative, operational
28 and capital costs; and

29 (iii) Demonstration of adequate insurance and financial assurances for collection,
30 transportation, recycling, reuse or disposal operations;

31 (7) Outreach and education to covered entities including, but not limited to:
32 (i) How to use and access the product stewardship program; and
33 (ii) How this information will be provided to collectors, retailers and other interested
34 parties;

1 (8) Public and stakeholder consultation, including but not limited to:
2 (i) Opportunities for the public and other stakeholders to comment on the product
3 stewardship plan prior to submission; and
4 (ii) Opportunities for the public and other stakeholders to comment on the
5 implementation and operation of the product stewardship program.
6 (b) If the department determines that a proposed product stewardship plan complies with
7 the provisions of this chapter and any applicable rules and is in the public interest, the department
8 shall approve the product stewardship plan.
9 (c) All product stewardship plans submitted and approved by the department shall be
10 available to the general public through the website of the producer or the stewardship
11 organization.
12 (d) The department shall maintain a website listing of producers and brands of mattresses
13 covered by approved product stewardship plans and product stewardship programs, updated by
14 the first day of each month.
15 **23-87-9. Submission and review of product stewardship plan.** - (a) All product
16 stewardship plans shall be submitted to the department no later than one hundred twenty (120)
17 days following the adoption of the applicable product-specific rules, or no later than one hundred
18 twenty (120) days prior to the sale or offer for sale of a product in Rhode Island.
19 (b) The department shall approve, approve with conditions, or reject the product
20 stewardship plan within sixty (60) days of receiving the plan unless the department requests
21 additional information regarding the plan.
22 (c) If a product stewardship plan is rejected and the producer wishes to submit a revised
23 plan, the producer must do so within sixty (60) days of the date of the notice of rejection.
24 (d) Product stewardship plans shall be updated and submitted to the department for
25 review at least once every four (4) years from the date on which the plan is first approved or as
26 otherwise determined by a schedule established by the department.
27 (e) If a producer joins an approved product stewardship plan, the producer shall notify the
28 department prior to selling or offering for sale any products in Rhode Island.
29 **23-87-10. Requirement for selling mattresses covered under product stewardship**
30 **plans.** - (a) As of the implementation date established by the applicable product specific rule, a
31 producer, retailer or other person may not sell the mattress or offer the mattress for sale to any
32 person in this state unless the producer is participating in an approved product stewardship
33 program.
34 (b) A retailer or other person complies with the requirements of this section if, on the date

1 the mattress is ordered from the producer or its agent, the website of the department lists the
2 producer, along with the mattress brand, as operating or participating in an approved product
3 stewardship program.

4 (c) At the time of sale to a consumer, a producer, retailer or other person selling a
5 mattress or offering a mattress for sale shall provide the consumer with information on where and
6 how to recycle or dispose of the mattress through a product stewardship program.

7 **23-87-11. Requirement for submittal of reports.** - (a) A producer shall annually
8 prepare and submit to the department a written report that describes how the product stewardship
9 program was implemented in accordance with the provisions of this chapter and all applicable
10 rules.

11 (b) The department may request that additional information be submitted in order to
12 verify any reported accomplishments under the program.

13 **23-87-12. Annual performance goals.** - (a)(1) A producer shall establish annual
14 performance goals for discarded products collected in a product stewardship program. A producer
15 shall establish reasonable annual performance goals for the first two (2) years of the program's
16 operation, provided that the goals include the following:

17 (i) Total amount collected or total amount collected per capita;

18 (ii) Collection rate; and

19 (iii) Disposition rate.

20 (2) The department shall establish the appropriate metric to use in measuring annual
21 performance goals in the product-specific rule.

22 (b) Failure to meet annual performance goals established by a producer for the first two
23 (2) years of the operation of the product stewardship program shall not be subject to enforcement
24 by the department. However, a producer shall establish, measure and report on the annual
25 performance goal. By the third (3rd) year of the operation of the product stewardship program for
26 a product, the department shall establish an enforceable, annual performance goal. A producer
27 shall meet or exceed this goal. Producers shall continue to fully implement a product stewardship
28 program even after an enforceable annual performance goal is achieved.

29 (c) A producer may establish product goals for mattresses covered by a product
30 stewardship program. These goals shall be specific to the product and intended to achieve
31 changes that result in a reduction in environmental or health impacts. The department shall
32 consider and make appropriate adjustments for any product goal adopted and successfully
33 implemented that affects the ability of a producer to meet an enforceable annual performance
34 goal.

1 **23-87-13. Establishment of Fees.** - The department may establish a schedule of fees to
2 be paid by producers. Fees may be established in amounts to recover, but not exceed, costs
3 incurred by the department in providing plan review, approval, program development, oversight
4 and compliance for the products for which a producer is responsible. Fees collected by the
5 department under this section shall be deposited in the environmental response fund established
6 pursuant to section 23-19.1-23.

7 **23-87-14. Proper disposal of products.** - No person shall knowingly dispose of any
8 mattress specified in this chapter except to handle, recycle or compost the material in accordance
9 with a plan submitted and approved by the department.

10 **23-87-15. Enforcement.** - The director is authorized to exercise all powers, direct and
11 incidental, necessary to carry out the purposes of this chapter. The director may institute
12 administrative or civil proceedings, or may request the attorney general to do the same, to enforce
13 any provision of this chapter or any rule, regulation or order issued pursuant to this chapter.

14 **23-87-16. Violations.** - A violation of any of the provisions of this law or any rule or
15 regulation promulgated pursuant thereto shall be punishable, in the case of a first (1st) violation,
16 by a civil penalty not to exceed one thousand dollars (\$1,000). In the case of a second (2nd) and
17 any further violation, the liability shall be for a civil penalty not to exceed five thousand dollars
18 (\$5,000) for each violation.

19 **23-87-17. Reporting by the department.** - The department shall annually, not later than
20 December 31, submit an annual report of its activities pursuant to this chapter. The report shall
21 include:

22 (1) An update on the implementation of this chapter and current state of compliance by
23 collectors, processors, producers and retailers;

24 (2) Recommendations to the general assembly and the governor regarding proposed
25 changes to this chapter, or any other chapter of the general laws, or any regulations promulgated
26 pursuant thereto; and

27 (3) Any other information the department deems appropriate. The report shall be
28 submitted to the governor, the president of the senate, the speaker of the house, and the house and
29 senate chairs of the committees on the environment.

30 **23-87-18. Evaluation of Federal Requirements.** - The department shall evaluate any
31 federal law that establishes a national program to manage any products specified in this chapter
32 through a product stewardship approach. If the department determines that the federal law
33 substantially meets or exceeds the requirements and intent of sections 1 to 18 of this chapter, the
34 department shall include information on the federal law in the next annual report.

1 **23-87-19. Requirement to Adopt Rules.** - The department may adopt rules before the
2 operative date specified or take any action before that date that is necessary to carry out the
3 provisions of this chapter.

4 **23-87-20. Implementation.** - No later than December 31, 2012, the department shall
5 begin developing and implementing the statewide product stewardship system as described in this
6 chapter.

7 **23-87-21. Multistate Implementation.** - The department may participate in the
8 establishment of a regional multistate organization or compact to assist in carrying out the
9 requirements of this chapter.

10 **23-87-22. Severability.** – If any provision of this chapter or any rule or regulation made
11 under this chapter, or its application to any person or circumstance is held invalid by a court of
12 competent jurisdiction, the remainder of the chapter, rule, or regulation and the application of the
13 provision to other persons or circumstances shall not be affected by this invalidity. The invalidity
14 of any section or sections or parts of any section or sections shall not affect the validity of the
15 remainder of the chapter.

16 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO HEALTH AND SAFETY - PRODUCERS RESPONSIBILITY FOR
DISCARDED PRODUCTS

- 1 This act would provide for the procedure for the responsible recycling, reuse and disposal
- 2 of mattresses.
- 3 This act would take effect upon passage.

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