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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

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A N A C T

RELATING TO HEALTH AND SAFETY

Introduced By: Senators Ruggerio, Sosnowski, Lombardo, Walaska, and Cool Rumsey

Date Introduced: February 12, 2013

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 88

4 RESPONSIBLE RECYCLING, REUSE AND DISPOSAL OF MATTRESSES

5 **23-88-1. 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 the disposal of discarded mattresses
17 from landfill and other forms of disposal; and

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

1 **23-88-2. Findings.** – The general assembly hereby finds and declares that:

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

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

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

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

14 **23-88-3. Definitions.** – As used in this chapter, the following words shall, unless the
15 context clearly requires otherwise, have the following meanings:

16 (1) “Brand” means a name, symbol, word or mark that attributes a mattress to the
17 producer of such mattress;

18 (2) “Covered entity” means any person in the state with a discarded mattress as set forth
19 in this chapter;

20 (3) “Department” means the Rhode Island department of environmental management;

21 (4) “Director” means the director of the Rhode Island department of environmental
22 management or his or her designee;

23 (5) "Discarded mattress" means any mattress that a consumer intends to discard, has
24 discarded or that is abandoned;

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

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

32 (8) "Mattress" means any resilient material or combination of materials that is enclosed
33 by ticking, used alone or in combination with other products, and that is intended for or promoted
34 for sleeping upon. "Mattress" includes any foundation and any renovation. "Mattress" does not

1 include any mattress pad, mattress topper, sleeping bag, pillow, car bed, carriage, basket, dressing
2 table, stroller, playpen, infant carrier, lounge pad, crib bumper, liquid and gaseous filled ticking
3 including any water bed and air mattress that does not contain upholstery material between the
4 ticking and the mattress core, and upholstered furniture that does not otherwise contain a
5 detachable mattress;

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

8 (10) "Mattress recycling council" or "council" means the organization created by
9 producers to design, submit and implement the mattress stewardship program described in section
10 2 of this chapter;

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

14 (12) "Mattress stewardship program" or "program" means the state-wide program
15 described in section 2 of this chapter and implemented pursuant to the mattress stewardship plan;

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

18 (14) "Performance goal" means a metric proposed by the council and approved by the
19 commissioner, to measure, on an annual basis, the performance of the mattress stewardship
20 program, taking into consideration technical and economic feasibilities, in achieving continuous,
21 meaningful improvement in improving the rate of mattress recycling in the state and any other
22 specified goal of the program;

23 (15) "Performance goal" mean a metric established by a producer to the department of
24 environmental management to measure, on an annual basis, the performance of a product
25 stewardship program in addressing recycling, reuse, safe disposal, environmental impacts or
26 health impacts related to a product;

27 (16) "Person" means an individual, trust, firm, joint stock company, corporation
28 (including government corporation), partnership, association, the federal government or any
29 agency or subdivision thereof, a state, municipality, commission, political subdivision of the
30 state, or any interstate body;

31 (17) "Producer" means any person who manufactures or renovates a mattress that is sold,
32 offered for sale or distributed in the state under the manufacturer's own name or brand.
33 "Producer" includes:

34 (i) The owner of a trademark or brand under which a mattress is sold, offered for sale or

1 distributed in this state, whether or not such trademark or brand is registered in this state; and

2 (ii) Any person who imports a mattress into the United States that is sold or offered for
3 sale in this state and that is manufactured or renovated by a person who does not have a presence
4 in the United States;

5 (18) "Recycling" means any process in which discarded mattresses, components and by-
6 products may lose their original identity or form as they are transformed into new, usable or
7 marketable materials. "Recycling" does not include energy recovery or energy generation by
8 means of combusting discarded products, components and by-products with or without other
9 waste products;

10 (19) "Renovate" or "renovation" means altering a mattress for the purpose of resale and
11 includes any one, or a combination of, the following: Replacing the ticking or filling, adding
12 additional filling, rebuilding a mattress, or replacing components with new or recycled materials.
13 "Renovate" or "renovation" does not include the: (i) Stripping of a mattress of its ticking or filling
14 without adding new material; (ii) Sanitization or sterilization of a mattress without otherwise
15 altering the mattress, or (iii) Altering of a mattress by a renovator when a person retains the
16 altered mattress for personal use, in accordance with regulations of the department of consumer
17 protection;

18 (20) "Renovator" means a person who renovates discarded mattresses for the purpose of
19 reselling such mattresses in a retail store;

20 (21) "Retailer" means any person who sells mattresses in this state or offers mattresses in
21 this state to a consumer through any means, including, but not limited to, remote offerings such as
22 sales outlets, catalogs or the Internet;

23 (22) "Reuse" means the return of a product into the economic stream for use in the same
24 kind of application as originally intended, without a change in the product's form or function;

25 (23) "Sanitization" means the direct application of chemicals to a mattress to kill human
26 disease-causing pathogens;

27 (24) "Sale" means the transfer of title of a mattress for consideration, including through
28 the use of a sales outlet, catalog, internet website or similar electronic means;

29 (25) "Sterilization" means the mitigation of any deleterious substances or organisms
30 including human disease-causing pathogens, fungi and insects from a mattress or filling material
31 using a process approved by the department;

32 (26) "Ticking" means the outermost layer of fabric or material of a mattress. "Ticking"
33 does not include any layer of fabric or material quilted together with, or otherwise attached to, the
34 outermost layer of fabric or material of a mattress;

1 (27) "Upholstery material" means all material, loose or attached, between the ticking and
2 the core of a mattress; and

3 (28) "Wholesaler" means any person who sells or distributes mattresses in the state, in a
4 nonretail setting, for the purpose of the resale of such mattresses.

5 **23-88-4. . Rulemaking. -The department may adopt rules as necessary to implement the**
6 **provisions of this chapter.**

7 **23-88-5. Product stewardship plan. – (a) On or before July 1, 2014, each producer shall**
8 **join the council and such council shall submit a plan, for the director’s approval, to establish a**
9 **state-wide mattress stewardship program, as described in this section. Any retailer may be a**
10 **member of such council. Such mattress stewardship program shall, to the extent it is**
11 **technologically feasible and economically practical:**

12 (1) Minimize public sector involvement in the management of discarded mattresses;

13 (2) Provide for the free, convenient and accessible state-wide collection of discarded
14 mattresses;

15 (3) Provide for producer-financed end-of-life management for discarded mattresses;

16 (4) Provide suitable storage containers at permitted municipal transfer stations for
17 segregated, discarded mattresses, at no cost to such municipality provided the municipal transfer
18 station makes space available for such purpose and imposes no fee for placement of such storage
19 container on its premises; and

20 (5) Include a fee that is sufficient to cover the costs of operating the program.

21 (b) The plan submitted pursuant to subsection (a) of this section shall:

22 (1) Identify each producer participating in the program;

23 (2) Describe the fee structure for the program;

24 (3) Establish performance goals for the first two (2) years of the program;

25 (4) Identify proposed facilities to be used by the program;

26 (5) Detail how the program will promote the recycling of discarded mattresses; and

27 (6) Include a description of the public education program.

28 (c) The council shall be a nonprofit organization with a fee structure that covers, but does
29 not exceed, the costs of developing the plan described in subsection (b) of this section, operating
30 the program described in subsection (a) of this section, and maintaining a financial reserve
31 sufficient to operate the program over a multi-year period of time in a fiscally prudent and
32 responsible manner. The council shall maintain all records relating to the program for a period of
33 not less than three (3) years.

34 (d) Pursuant to the program, recycling shall be preferred over any other disposal method

1 to the extent that recycling is technologically feasible and economically practical.

2 (e) The director shall approve the plan for the establishment of the mattress stewardship
3 program, provided such plan reasonably meets the requirements of this section. Not later than
4 ninety (90) days after submission of the plan pursuant to this section, the commissioner shall
5 make a determination whether to approve the plan. Prior to making such determination, the
6 commissioner shall post the plan on the department's internet website and solicit public comments
7 on the plan. In the event that the director does not approve the plan, the director shall describe the
8 reasons for the disapproval in a notice of determination that the director shall provide to the
9 council. The council shall revise and resubmit the plan to the commissioner not later than forty-
10 five (45) days after receipt of notice of the director's disapproval notice. Not later than forty-five
11 (45) days after receipt of the revised plan, the director shall review and approve or disapprove the
12 revised plan. The council may resubmit a revised plan to the director for approval on not more
13 than two (2) occasions. If the council fails to submit a plan that is acceptable to the commissioner,
14 the commissioner shall modify a submitted plan and approve it. Not later than sixty (60) days
15 after the approval of a plan pursuant to this section, the council shall implement the mattress
16 stewardship program.

17 (f) It is the responsibility of the council to:

18 (1) Notify the director whenever there is a proposed substantial change to the program.
19 For the purposes of this subdivision, "substantial change" shall include, but not be limited to, a
20 change in:

21 (i) The program's fee structure;

22 (ii) Processing facilities to be used for discarded mattresses collected pursuant to the
23 program; or

24 (iii) The system for collecting mattresses.

25 (2) Not later than March 1, 2016, the council shall submit updated performance goals to
26 the director that are based on the experience of the program during the first two (2) years of the
27 program.

28 (g) The council shall notify the director of any other changes to the program on an
29 ongoing basis, whenever they occur, without resubmission of the plan to the director for approval.
30 Such changes shall include, but not be limited to, a change in the membership council.

31 (h) On or before July 1, 2014, and every two (2) years thereafter, the council shall
32 propose a uniform fee for all mattresses sold in this state. The council may propose a change to
33 the uniform fee more frequently than once every two (2) years if the council determines such
34 change is needed to avoid funding shortfalls or excesses. Any proposed fee shall be reviewed by

1 an auditor to assure that such assessment does not exceed the costs of the mattress stewardship
2 program described in subsection (a) of this section and to maintain financial reserves sufficient to
3 operate the program over a multi-year period in a fiscally prudent and responsible manner. The
4 auditor shall recommend an amount for such fee to the department. The department shall be
5 responsible for the approval of such fee. Such independent auditor shall be selected by the
6 department and the department shall be responsible for the review of the work product of such
7 independent auditor, including, but not limited to, the review of such auditor's assessment of the
8 bid and purchase procedures utilized by the representative organization to implement such
9 program. The cost of any work performed by such auditor pursuant to the provisions of this
10 subsection and subsection (k) of this section shall be funded by the fee described in this
11 subsection.

12 (i) On and after the implementation of the mattress stewardship program, the fee,
13 established pursuant to subsection (a) of this section and described in subsection (h) of this
14 section, shall be added to the cost of all mattresses sold to retailers and distributors in this state by
15 each producer. On and after such implementation date, each retailer or distributor, as applicable,
16 shall add the amount of such fee to the purchase price of all mattresses sold in this state. The
17 council may, subject to the director's approval, establish an alternative, practicable means of
18 collecting or remitting such fee.

19 (j) Not later than March 1st of each year, the council shall submit an annual report to the
20 director, on a form prescribed by the director. The director shall post such annual report on the
21 department's Internet website. Such report shall include:

22 (1) The tonnage of mattresses collected pursuant to the program from:

23 (i) Municipal curbside collection programs;

24 (ii) Municipal transfer stations;

25 (iii) Retailers; and

26 (iv) All other covered entities;

27 (2) The tonnage of mattresses diverted for recycling;

28 (3) The weight of discarded mattresses recycled, as indicated by the weight of each of the
29 commodities sold to secondary markets;

30 (4) The weight of mattresses, or parts thereof, sent for disposal at each of the following:

31 (i) Rhode Island resource recovery corporation; and

32 (ii) Any other facilities;

33 (5) Public education materials and methods used to support the program;

34 (6) An evaluation of the effectiveness of the methods and processes used to achieve

1 performance goals of the program;

2 (7) Recommendations for any changes to the program; and

3 (8) Any other relevant public information requested by the director, provided such
4 request does not require the disclosure of any proprietary trade or business secret.

5 (k) Two (2) years after the implementation of the program and upon the request of the
6 director but not more frequently than once a year, the council shall cause an audit of the program
7 to be conducted by the auditor describe in subsection (h) of this section. Such audit shall review
8 the accuracy of the council's data concerning the program and provide any other information
9 requested by the director. Such audit shall be paid for by the council. The council shall maintain
10 all records relating to the program for not less than seven (7) years.

11 (l) The council may conduct research related to improving the efficiency of used mattress
12 collection, dismantling and recycling operations, including pilot programs to test new processes,
13 methods or equipment. The costs of such research may be included in calculating the amount of
14 the fee authorized by this section.

15 (m) No covered entity that participates in the program shall charge for receipt of
16 mattresses generated in the state. Covered entities may charge a fee for providing the service of
17 collecting mattresses and may restrict the acceptance of mattresses by number, source or physical
18 condition.

19 **23-88-6. Product stewardship plan.** – Not later than three (3) years after the approval of
20 the plan pursuant to section 23-88-5 of this chapter, the director shall submit a report to the
21 general assembly. Such report shall provide an evaluation of the mattress stewardship program,
22 and make recommendations to improve the program, as necessary.

23 **23-88-7. Immunity.** – Each producer and the council shall be immune from liability for
24 any claim of a violation of antitrust law or unfair trade practice, if such conduct is a violation of
25 antitrust law, to the extent such producer or council is exercising authority pursuant to the
26 provisions of this chapter.

27 **23-88-8. Enforcement.** – (a) The commissioner may seek civil enforcement of the
28 provisions of this chapter.

29 (b) A producer injured by a violation of the requirements of this chapter by another
30 producer shall have a private right of action. A private right of action by a producer under this
31 chapter is in the public interest.

32 **23-88-9. Collaboration.** – In the event that another state implements a mattress recycling
33 program, the council may collaborate with such state to conserve efforts and resources used in
34 carrying out the mattress stewardship program, provided such collaboration is consistent with the

1 requirements of this chapter.

2 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

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

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