

2013 -- S 0261 SUBSTITUTE A

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LC01103/SUB A
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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 90

4 RESPONSIBLE RECYCLING, REUSE AND DISPOSAL OF MATTRESSES

5 **23-90-1. Purpose.** – The purposes of this chapter are:

6 (1) To establish a system for the collection, recycling, and reuse for discarded mattresses
7 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; and

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

18 **23-90-2. Findings.** – The general assembly hereby finds and declares that:

19 (1) It is in the best interest of this state for providers of mattresses sold in Rhode Island to

1 take responsibility for reducing the environmental and financial impacts of a mattress over its life
2 cycle, from design to management after the end of a mattress's useful life;

3 (2) It is in the best interest of this state to reduce illegal dumping of discarded mattresses
4 and determine a process for minimizing costs incurred by Rhode Island's cities and towns for the
5 management of discarded mattresses; and

6 (3) It is in the best interest of this state for producers to develop a statewide product
7 stewardship system that serves urban and rural areas in Rhode Island and provides cost-effective,
8 convenient opportunities for the collection, transportation, recovery and safe management of
9 discarded products.

10 **23-90-3. Definitions.** – As used in this chapter, the following words shall, unless the
11 context clearly requires otherwise, have the following meanings:

12 (1) "Brand" means a name, symbol, word or mark that attributes a mattress to the
13 producer of such mattress.

14 (2) "Covered entity" means any political subdivision of the state, any mattress retailer,
15 any permitted transfer station, any waste to energy facility, any healthcare facility, any
16 educational facility, any correctional facility, any military base, or any commercial or non profit
17 lodging establishment that possesses a discarded mattress that was discarded in this state.
18 Covered entity does not include any renovator, refurbisher or any person who transports a
19 discarded mattress.

20 (3) "Consumer" means an individual who is also a resident of this state.

21 (4) "Corporation" means the Rhode Island Resource Recovery Corporation.

22 (5) "Corporation Director" means the executive director of the Rhode Island Resource
23 Recovery Corporation.

24 (6) "Council" or "mattress recycling council" means the state-wide non profit
25 organization created by producers or created by any trade association that represents producers
26 who account for a majority of mattress production in the United States to design, submit and
27 implement the mattress stewardship plan as described in this chapter.

28 (7) "Discarded mattress" means any mattress that a consumer intends to discard, has
29 discarded or that is abandoned.

30 (8) "Energy recovery" means the process by which all or a portion of solid waste
31 materials are processed or combusted in order to utilize the heat content or other forms of energy
32 derived from such solid waste materials.

33 (9) "Foundation" means any ticking-covered structure that is used to support a mattress
34 and that is composed of one or more of the following: A constructed frame, foam or a box spring.

1 "Foundation" does not include any bed frame or base made of wood, metal or other material that
2 rests upon the floor and that serves as a brace for a mattress.

3 (10) "Mattress" means any resilient material or combination of materials that is enclosed
4 by ticking, used alone or in combination with other products, and that is intended for or promoted
5 for sleeping upon. "Mattress" includes any foundation and any renovation. "Mattress" does not
6 include any mattress pad, mattress topper, sleeping bag, pillow, crib mattress, car bed, carriage,
7 basket, dressing table, stroller, playpen, infant carrier, lounge pad, crib bumper, liquid and
8 gaseous filled ticking including any water bed and air mattress that does not contain upholstery
9 material between the ticking and the mattress core, and upholstered furniture that does not
10 otherwise contain a detachable mattress.

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

13 (12) "Mattress recycling council" or "council" means the organization created by
14 producers to design, submit and implement the mattress stewardship program described in section
15 23-88-5.

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

19 (14) "Mattress stewardship program" or "program" means the state-wide program
20 described in section 23-88-5 and implemented pursuant to the mattress stewardship plan as
21 approved by the corporation director.

22 (15) "Mattress topper" means any item that contains resilient filling, with or without
23 ticking, that is intended to be used with or on top of a mattress.

24 (16) "Performance goal" means a metric proposed by the council, to measure, on an
25 annual basis, the performance of the mattress stewardship program, taking into consideration
26 technical and economic feasibilities, in achieving continuous, meaningful improvement in
27 improving the rate of mattress recycling in the state and any other specified goal of the program.

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

31 (i) The owner of a trademark or brand under which a mattress is sold, offered for sale or
32 distributed in this state, whether or not such trademark or brand is registered in this state; and

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

1 in the United States:

2 (18) "Recycling" means any process in which discarded mattresses, components and by-
3 products may lose their original identity or form as they are transformed into new, usable or
4 marketable materials. "Recycling" does not include as a primary process the use of incineration
5 for energy recovery or energy generation by means of combustion.

6 (19) "Renovate" or "renovation" means altering a mattress for the purpose of resale and
7 includes any one, or a combination of, the following: Replacing the ticking or filling, adding
8 additional filling, rebuilding a mattress, or replacing components with new or recycled materials.
9 "Renovate" or "renovation" does not include the:

10 (i) Stripping of a mattress of its ticking or filling without adding new material;

11 (ii) Sanitization or sterilization of a mattress without otherwise altering the mattress, or

12 (iii) Altering of a mattress by a renovator when a person retains the altered mattress for
13 personal use, in accordance with regulations of the department of business regulation.

14 (20) "Renovator" means a person who renovates discarded mattresses for the purpose of
15 reselling such mattresses in a retail store.

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

19 (22) "Sanitization" means the direct application of chemicals to a mattress to kill human
20 disease-causing pathogens.

21 (23) "Sale" means the transfer of title of a mattress for consideration, including through
22 the use of a sales outlet, catalog, internet website or similar electronic means.

23 (24) "Sterilization" means the mitigation of any deleterious substances or organisms
24 including human disease-causing pathogens, fungi and insects from a mattress or filling material
25 using a process approved by the department of business regulation.

26 (25) "Ticking" means the outermost layer of fabric or material of a mattress. "Ticking"
27 does not include any layer of fabric or material quilted together with, or otherwise attached to, the
28 outermost layer of fabric or material of a mattress.

29 (26) "Upholstery material" means all material, loose or attached, between the ticking and
30 the core of a mattress.

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

33 **23-90-4. Mattress stewardship council established.** – (a) [On or before July 1, 2015,](#)
34 [each producer shall join the council and such council shall submit a plan, for the corporation](#)

1 director's approval, to establish a state-wide mattress stewardship program, as described in this
2 section. Any retailer may be a member of such council. Such mattress stewardship program shall,
3 to the extent it is technologically feasible and economically practical:

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

5 (2) Provide for the convenient and accessible state-wide collection of discarded
6 mattresses from any person in the state with a discarded mattress that was discarded in the state,
7 including from participating covered entities that accumulated and segregated a minimum of fifty
8 (50) discarded mattresses for collection at one time, or a minimum of thirty (30) discarded
9 mattresses for collection at one time in the case of participating municipal transfer stations;

10 (3) Provide for council-financed recycling and disposal of discarded mattresses;

11 (4) Provide suitable storage containers at permitted municipal transfer stations, municipal
12 government property or other solid waste management facilities for segregated, discarded
13 mattresses, or make other mutually agreeable storage and transportation agreements at no cost to
14 such municipality provided the municipal transfer station, municipal government property or
15 other solid waste management facilities make space available for such purpose and imposes no
16 fee for placement of such storage container on its premises;

17 (5) Include a uniform mattress stewardship fee that is sufficient to cover the costs of
18 operating and administering the program; and

19 (6) Establish a financial incentive that provides for the payment of a monetary sum,
20 established by the council, to promote the recovery of mattresses.

21 (b) The council shall be a nonprofit organization with a fee structure that covers, but does
22 not exceed, the costs of developing the plan and operating and administering the program in
23 accordance with the requirements of this chapter, and maintaining a financial reserve sufficient to
24 operate the program over a multi-year period of time in a fiscally prudent and responsible
25 manner. The council shall maintain all records relating to the program for a period of not less than
26 three (3) years.

27 (c) Pursuant to the program, recycling shall be preferred over any other disposal method
28 to the extent that recycling is technologically feasible and economically practical.

29 (d) The council shall enter into an agreement with the corporation to reimburse for
30 reasonable costs directly related to administering the program but not to exceed the cost of two
31 (2) full time equivalent employees.

32 **23-90-5. Mattress stewardship plan. –** (a) On or before July 1, 2015, the mattress
33 stewardship council shall submit a mattress stewardship plan for the establishment of a mattress
34 stewardship program to the corporation director for approval.

1 (b) The plan submitted pursuant to subsection (a) of this section shall, to the extent it is
2 technologically feasible and economically practical:

3 (1) Identify each producer's participation in the program;

4 (2) Describe the fee structure for the program and propose a uniform stewardship fee that
5 is sufficient to cover the costs of operating and administering the program;

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

7 (4) Identify proposed recycling facilities to be used by the program, such facilities shall
8 not require a solid waste management facilities license;

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

10 (6) Include a description of the public education program;

11 (7) Describe fee disclosure language that retailers will be required to prominently display
12 that will inform consumers of the amount and purpose of the fee; and

13 (8) Identify the methods and procedures to facilitate implementation of the mattress
14 stewardship program in coordination with the corporation director and municipalities.

15 (c) Not later than ninety (90) days after submission of the plan pursuant to this section,
16 the corporation shall make a determination whether to:

17 (1) Approve the plan as submitted; or

18 (2) Deny the plan.

19 (d) The corporation director shall approve the plan for the establishment of the mattress
20 stewardship program, provided such plan reasonably meets the requirements of this section. Prior
21 to making such determination, the corporation director shall post the plan for at least thirty (30)
22 days in accordance with the "Administrative Procedures Act" as set forth in chapter 42-35 on the
23 corporation's website and solicit public comments on the plan, to be posted on the website.

24 (e) In the event that the corporation director denies the plan, the corporation director shall
25 provide a notice of determination to the council, within sixty (60) days, detailing the reasons for
26 the disapproval. The council shall revise and resubmit the plan to the corporation director not
27 later than forty-five (45) days after receipt of notice of the corporation director's denial notice.
28 Not later than forty-five (45) days after receipt of the revised plan, the corporation director shall
29 review and approve or deny the revised plan. The council may resubmit a revised plan to the
30 corporation director for approval on not more than two (2) occasions. If the council fails to
31 submit a plan that is acceptable to the corporation director, because it does not meet the criteria
32 pursuant to subdivision (b)(1-8), the corporation director shall have the ability to modify the
33 submitted plan and approve it. Not later than one hundred twenty (120) days after the approval of
34 a plan pursuant to this section, the council shall implement the mattress stewardship program.

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

2 (1) Notify the corporation director whenever there is a proposed substantial change to the
3 program. If the corporation director takes no action on a proposed substantial change within
4 ninety (90) days after notification of the proposed change, the proposed change shall be deemed
5 approved.

6 For the purposes of this subdivision, "substantial change" shall include, but not be limited
7 to:

8 (i) A change in the processing facilities to be used for discarded mattresses collected
9 pursuant to the program; or

10 (ii) A material change to the system for collecting mattresses.

11 (2) Not later than October 1, 2017, the council shall submit to the corporation director for
12 review updated performance goals that are based on the experience of the program during the first
13 two (2) years of the program.

14 (g) The council shall notify the corporation director of any other changes to the program
15 on an ongoing basis, whenever they occur, without resubmission of the plan to the corporation
16 director for approval. Such changes shall include, but not be limited to, a change in the
17 composition, officers or contact information of the council.

18 (h) On or before July 1, 2015, and every two (2) years thereafter, the council shall
19 propose a uniform fee for all mattresses sold in this state. The council may propose a change to
20 the uniform fee more frequently than once every two (2) years if the council determines such
21 change is needed to avoid funding shortfalls or excesses. Any proposed fee shall be reviewed by
22 an independent auditor to assure that such assessment does not exceed the costs of the mattress
23 stewardship program described in subsection (b) of this section and to maintain financial reserves
24 sufficient to operate the program over a multi-year period in a fiscally prudent and responsible
25 manner. Not later than sixty (60) days after the council proposes a mattress stewardship fee, the
26 auditor shall render an opinion to the corporation director as to whether the proposed mattress
27 stewardship fee is reasonable to achieve the goals set forth in this section. If the auditor concludes
28 that the mattress stewardship fee is reasonable, then the proposed fee shall go into effect. If the
29 auditor concludes that the mattress stewardship fee is not reasonable, the auditor shall provide the
30 council with written notice explaining the auditor's opinion. Not later than fourteen (14) days
31 after the council's receipt of the auditor's opinion, the council may either propose a new mattress
32 stewardship fee or provide written comments on the auditor's opinion. If the auditor concludes
33 that the fee is not reasonable, the corporation director shall decide, based on the auditor's opinion
34 and any comments provided by the council, whether to approve the proposed mattress

1 stewardship fee. Such auditor shall be selected by the council. The cost of any work performed by
2 such auditor pursuant to the provisions of the subsection and paragraph (i) of this section shall be
3 funded by the council.

4 (i)(A) On and after the implementation of the mattress stewardship program, the fee,
5 established pursuant to subsection (b) of this section, and described in subsection (h) of this
6 section, shall be added to the cost of all mattresses sold to retailers and distributors in this state by
7 each producer. On and after such implementation date, each retailer or distributor, as applicable,
8 shall add the amount of such fee to the purchase price of all mattresses sold in this state. The
9 council may, subject to the corporation director's approval, establish an alternative, practicable
10 means of collecting or remitting such fee.

11 (B) On and after the implementation date of the mattress stewardship program, no
12 producer, distributor or retailer shall sell or offer for sale a mattress to any person in the state if
13 the producer is not a member of the council.

14 (C) No retailer or distributor shall be found to be in violation of the provisions of this
15 section, if, on the date the mattress was ordered from the producer or its agent, the producer of
16 said mattress was listed on the corporation's website in accordance with the provisions of this
17 chapter.

18 (j) Not later than October 1, 2016 an annually thereafter, the council shall submit an
19 annual report to the corporation director. The corporation director shall post such annual report on
20 the corporation's website. Such report shall include, but not be limited to: :

21 (1) The weight of mattresses collected pursuant to the program from:

22 (i) Municipal and/or transfer stations;

23 (ii) Retailers; and

24 (iii) All other covered entities;

25 (2) The weight of mattresses diverted for recycling;

26 (3) Identification of the mattress recycling facilities to which mattresses were delivered
27 for recycling;

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

30 (5) 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 (6) Samples of public education materials and methods used to support the program;

34 (7) A description of efforts undertaken and evaluation of the methods used to disseminate

1 such materials:

2 (8) Updated performance goals and an evaluation of the effectiveness of the methods and
3 processes used to achieve performance goals of the program; and

4 (9) Recommendations for any changes to the program.

5 (k) Two (2) years after the implementation of the program and upon the request of the
6 corporation director but not more frequently than once a year, the council shall cause an audit of
7 the program to be conducted by the auditor describe in subsection (h) of this section. Such audit
8 shall review the accuracy of the council's data concerning the program and provide any other
9 information requested by the corporation director. Such audit shall be paid for by the council. The
10 council shall maintain all records relating to the program for not less than three (3) years.

11 (l) No covered entity that participates in the program shall charge for receipt of
12 mattresses generated in the state. Covered entities may charge a fee for providing the service of
13 collecting mattresses and may restrict the acceptance of mattresses by number, source or physical
14 condition.

15 (m) Covered entities that, upon the date of this act's passage, have an existing program
16 for recycling discarded mattresses may continue to operate such program without coordination of
17 the council, so long as the entities are able to demonstrate, in writing, to the corporation director
18 that the facilities to which discarded mattresses are delivered are engaged in the business of
19 recycling said mattresses and the corporation director approves the written affirmation that the
20 facility engages in mattress recycling of mattresses received by the covered entity. A copy of the
21 written affirmation and the corporation's approval shall be provided to the council by the
22 corporation director in a timely manner.

23 **23-90-6. Responsibilities of the Rhode Island resource recovery corporation. – (a)**
24 **The corporation shall review for approval the mattress stewardship plan of the council.**

25 (b) The corporation shall maintain on its website information on collection opportunities
26 for mattresses, including collection site locations. The information must be made available in a
27 printable format for retailers and consumers.

28 (c) Not later than the implementation date of the mattress stewardship program, the
29 corporation shall list the names of participating producers covered by the program and the cost of
30 the approved mattress stewardship fee on its website.

31 (d) The corporation shall approve the mattress stewardship fee to be applied by the
32 council to mattresses pursuant to this chapter.

33 (e) Pursuant to section 23-88-11, the corporation shall report biennially to the general
34 assembly on the operation of the statewide system for collection, transportation and recycling of

1 mattresses.

2 **23-90-7. Regulations.** – The corporation is hereby authorized to promulgate additional
3 rules and regulations pursuant to the administrative procedures act, chapter 42-35, to implement
4 the provisions of this chapter.

5 **23-90-8. Immunity.** – Each producer, retailer and the council shall be immune from
6 liability for any claim of a violation of antitrust law, to the extent such producer or council is
7 exercising authority pursuant to the provisions of this chapter, including but not limited to:

8 (1) The creation, implementation or management of a plan pursuant to section 23-88-5 of
9 this chapter, and the types or quantities of used mattresses recycled or otherwise managed
10 pursuant to a plan;

11 (2) The cost and structure of a plan; and

12 (3) The establishment, administration, collection or disbursement of the mattress
13 stewardship fee associated with funding the implementation of the plan.

14 **23-90-9. Violations.** – A violation of any of the provisions of this chapter or any rule or
15 regulation promulgated pursuant to section 23-88-7 shall be punishable by a civil penalty not to
16 exceed one thousand dollars (\$1,000). In the case of a second and any subsequent violation, the
17 civil penalty shall not exceed five thousand dollars (\$5,000) for each violation.

18 **23-90-10. Collaboration.** – In the event that another state implements a mattress
19 recycling program, the council may collaborate with such state to conserve efforts and resources
20 used in carrying out the mattress stewardship program, provided such collaboration is consistent
21 with the requirements of this chapter.

22 **23-90-11. Report to the General Assembly.** – Not later than three (3) years after the
23 approval of the plan pursuant to section 23-88-5 of this chapter, the corporation director shall
24 submit a report to the general assembly. Such report shall provide an evaluation of the mattress
25 stewardship program.

26 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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