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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2015

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A N A C T

RELATING TO HEALTH AND SAFETY - RESPONSIBLE RECYCLING, REUSE, AND
DISPOSAL OF MATTRESSES

Introduced By: Senators Ruggerio, Sosnowski, Miller, and Metts

Date Introduced: March 03, 2015

Referred To: Senate Environment & Agriculture

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 23-90-3 and 23-90-5 of the General Laws in Chapter 23-90
2 entitled "Responsible Recycling, Reuse and Disposal of Mattresses" are hereby amended to read
3 as follows:

4 **23-90-3. Definitions.** -- As used in this chapter, the following words shall, unless the
5 context clearly requires otherwise, have the following meanings:

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

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

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

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

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

18 (6) "Council" or "mattress recycling council" means the state-wide non profit

1 organization created by producers or created by any trade association that represents producers
2 who account for a majority of mattress production in the United States to design, submit and
3 implement the mattress stewardship plan as described in this chapter.

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

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

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

13 (10) "Mattress" means any resilient material or combination of materials that is enclosed
14 by ticking, used alone or in combination with other products, and that is intended for or promoted
15 for sleeping upon. "Mattress" includes any foundation ~~and any renovation~~ , renovated foundation,
16 or renovated mattress.

17 "Mattress" does not include any of the following:

18 (i) An unattached mattress pad, an unattached mattress topper, including any item with
19 resilient filling, with or without ticking, that is intended to be used with or on top of a mattress;

20 (ii) A sleeping bag, pillow~~;~~

21 (iii) A crib or bassinet mattress, car bed~~;~~

22 (iv) Juvenile products including a carriage, basket, dressing table, stroller, playpen, infant
23 carrier, lounge pad, crib bumper, and the pads for those juvenile products;

24 (v) A product that contains, liquid ~~and~~ or gaseous filled ticking including any water bed
25 ~~and~~ or air mattress that does not contain upholstery material between the ticking and the mattress
26 core~~;~~ ~~and~~ or

27 (vi) Any upholstered furniture that does not ~~otherwise~~ contain a detachable mattress
28 including, but not limited to, a fold-out sofa bed or futon.

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

31 (12) "Mattress recycling council" or "council" means the organization created by
32 producers to design, submit and implement the mattress stewardship program described in § 23-
33 90-5.

34 (13) "Mattress stewardship fee" means the amount added to the purchase price of a

1 mattress sold in this state that is necessary to cover the cost of collecting, transporting and
2 processing discarded mattresses by the council pursuant to the mattress stewardship program.

3 (14) "Mattress stewardship program" or "program" means the state-wide program
4 described in § 23-90-5 and implemented pursuant to the mattress stewardship plan as approved by
5 the corporation director.

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

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

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

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

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

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

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

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

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

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

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

34 (21) "Retailer" means any person who sells mattresses in this state or offers mattresses in

1 this state to a consumer through any means, including, but not limited to, remote offerings such as
2 sales outlets, catalogs or the Internet.

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

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

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

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

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

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

17 **23-90-5. Mattress stewardship plan.** -- (a) On or before July 1, 2015, the mattress
18 stewardship council shall submit a mattress stewardship plan for the establishment of a mattress
19 stewardship program to the corporation director for approval.

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

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

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

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

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

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

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

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

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

34 (c) Not later than ninety (90) days after submission of the plan pursuant to this section,

1 the corporation shall make a determination whether to:

2 (1) Approve the plan as submitted; or

3 (2) Deny the plan.

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

9 (e) In the event that the corporation director denies the plan, the corporation director
10 shall provide a notice of determination to the council, within sixty (60) days, detailing the reasons
11 for the disapproval. The council shall revise and resubmit the plan to the corporation director not
12 later than forty-five (45) days after receipt of notice of the corporation director's denial notice.
13 Not later than forty-five (45) days after receipt of the revised plan, the corporation director shall
14 review and approve or deny the revised plan. The council may resubmit a revised plan to the
15 corporation director for approval on not more than two (2) occasions. If the council fails to
16 submit a plan that is acceptable to the corporation director, because it does not meet the criteria
17 pursuant to subdivision (b)(1-8), the corporation director shall have the ability to modify the
18 submitted plan and approve it. Not later than one hundred twenty (120) days after the approval of
19 a plan pursuant to this section, the council shall implement the mattress stewardship program.

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

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

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

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

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

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

33 (g) The council shall notify the corporation director of any other changes to the program
34 on an ongoing basis, whenever they occur, without resubmission of the plan to the corporation

1 director for approval. Such changes shall include, but not be limited to, a change in the
2 composition, officers or contact information of the council.

3 (h) On or before July 1, 2015, and every two (2) years thereafter, the council shall
4 propose a uniform fee for all mattresses sold in this state. The council may propose a change to
5 the uniform fee more frequently than once every two (2) years if the council determines such
6 change is needed to avoid funding shortfalls or excesses. Any proposed fee shall be reviewed by
7 an independent auditor to assure that such assessment does not exceed the costs of the mattress
8 stewardship program described in subsection (b) of this section and to maintain financial reserves
9 sufficient to operate the program over a multi-year period in a fiscally prudent and responsible
10 manner. Not later than sixty (60) days after the council proposes a mattress stewardship fee, the
11 auditor shall render an opinion to the corporation director as to whether the proposed mattress
12 stewardship fee is reasonable to achieve the goals set forth in this section. If the auditor concludes
13 that the mattress stewardship fee is reasonable, then the proposed fee shall go into effect not less
14 than ninety (90) days after the auditor notifies the corporation director that the fee is reasonable.
15 If the auditor concludes that the mattress stewardship fee is not reasonable, the auditor shall
16 provide the council with written notice explaining the auditor's opinion. Not later than fourteen
17 (14) days after the council's receipt of the auditor's opinion, the council may either propose a new
18 mattress stewardship fee or provide written comments on the auditor's opinion. If the auditor
19 concludes that the fee is not reasonable, the corporation director shall decide, based on the
20 auditor's opinion and any comments provided by the council, whether to approve the proposed
21 mattress stewardship fee. Such auditor shall be selected by the council. The cost of any work
22 performed by such auditor pursuant to the provisions of the subsection and paragraph (i) of this
23 section shall be funded by the council.

24 (i) (A) On and after the implementation of the mattress stewardship program, ~~the fee,~~
25 ~~established pursuant to subsection (b) of this section, and described in subsection (h) of this~~
26 ~~section, shall be added to the cost of all mattresses sold to retailers and distributors in this state by~~
27 ~~each producer. On and after such implementation date, each retailer or distributor, as applicable,~~
28 each retailer shall add the amount of ~~such~~ the fee established pursuant to subsection (b) of this
29 section and described in subsection (h) of this section to the purchase price of all mattresses sold
30 in this state. The fee shall be remitted by the retailer to the council. The council may, subject to
31 the corporation director's approval, establish an alternative, practicable means of collecting or
32 remitting such fee.

33 (B) On and after the implementation date of the mattress stewardship program, no
34 producer, distributor or retailer shall sell or offer for sale a mattress to any person in the state if

1 the producer is not a member of the council.

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

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

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

10 (i) Municipal and/or transfer stations;

11 (ii) Retailers; and

12 (iii) All other covered entities;

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

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

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

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

19 (i) Rhode Island resource recovery corporation; and

20 (ii) Any other facilities;

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

22 (7) A description of efforts undertaken and evaluation of the methods used to
23 disseminate such materials;

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

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

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

33 (l) No covered entity that participates in the program shall charge for receipt of
34 mattresses generated in the state. Covered entities may charge a fee for providing the service of

1 collecting mattresses and may restrict the acceptance of mattresses by number, source or physical
2 condition.

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

11 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 - RESPONSIBLE RECYCLING, REUSE, AND
DISPOSAL OF MATTRESSES

- 1 This act clarifies the definition of "mattress" in the "Responsible Recycling, Reuse, and
- 2 Disposal of Mattresses Act".
- 3 This act would take effect upon passage.

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