HOUSE DOCKET, NO. 3107 FILED ON: 2/18/2021

HOUSE . . . . . No. 988

The Commonwealth of Massachusetts

PRESENTED BY:

Edward R. Philips

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to establish a mattress recycling program in the Commonwealth.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Edward R. Philips	*8th Norfolk*	*2/18/2021*
Paul McMurtry	*11th Norfolk*	*2/24/2021*
Mathew J. Muratore	*1st Plymouth*	*2/24/2021*
Patrick M. O'Connor	*Plymouth and Norfolk*	*3/4/2021*
John H. Rogers	*12th Norfolk*	*3/8/2021*
Tommy Vitolo	*15th Norfolk*	*6/16/2021*
Jessica Ann Giannino	*16th Suffolk*	*6/22/2021*
Natalie M. Higgins	*4th Worcester*	*9/7/2021*
Jamie Zahlaway Belsito	*4th Essex*	*1/26/2022*
Danillo A. Sena	*37th Middlesex*	*1/26/2022*

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HOUSE . . . . . No. 988

By Mr. Philips of Sharon, a petition (accompanied by bill, House, No. 988) of Edward R. Philips and others for legislation to establish a mattress recycling program in the Commonwealth. Environment, Natural Resources and Agriculture.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Second General Court
(2021-2022)

An Act to establish a mattress recycling program in the Commonwealth.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Section 1. Definitions

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

(2) “Commissioner” means the Commissioner of the Department of Environmental Protection;

(3) "Covered entity" means any political subdivision of the state, mattress retailer, permitted transfer station, waste-to-energy facility, health care facility, educational facility, military base or commercial or nonprofit lodging establishment that possesses a discarded mattress that was used and discarded in this state. "Covered entity" does not include any renovator, refurbisher or any person who only transports a discarded mattress;

(4) "Department" means the Department of Environmental Protection ;

(5) "Discarded mattress" means any mattress that a consumer discarded, intends to discard or abandoned in the state (but does not include mattresses that cannot be safely recycled because they have been contaminated by putrescible solid waste, or are substantially soiled, infested with bedbugs, or pose a risk to worker health or equipment, which units should be disposed of through the existing solid waste system).

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

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

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

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

(10) "Mattress recycling council" or "council" means the nonprofit organization created by producers or created by any trade association that represents producers who account for a majority of mattress production in the United States to design, submit and implement the mattress stewardship program described in section 2 of this act;

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

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

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

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

(15) "Producer" means any person who manufactures or renovates a mattress that is sold, offered for sale or distributed in the state under the producer's own name or brand. "Producer" includes (A) the owner of a trademark or brand under which a mattress is sold,

offered for sale or distributed in this state, whether or not such trademark or brand is registered in this state, and (B) any person who imports a mattress into the United States that is sold or offered for sale in this state and that is manufactured or renovated by a person who does not have a presence in the United States;

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

(17) "Renovate" or "renovation" means altering a mattress for the purpose of resale including any one, or a combination of, the following: Replacing the ticking or filling, adding additional filling, or replacing components with new or recycled materials. "Renovate" or "renovation" does not include (A) the stripping of a mattress of its ticking or filling without adding new material, (B) the sanitization or sterilization of a mattress without otherwise altering the mattress, or (C) the altering of a mattress by a renovator when a person retains the altered mattress for personal use, in accordance with regulations of the Department of Consumer and Business Services;

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

(19) "Retailer" means any person who sells mattresses to a consumer or to an ultimate end user in this state or offers mattresses to a consumer in this state;

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

(21) "Sale" means the transfer of title of a mattress for consideration, including, but not limited to, the use of a sales outlet, catalog, Internet web site or similar electronic means to a consumer or to an ultimate end user in the state;

(22) "Sterilization" means the mitigation of any deleterious substances or organisms, including human disease-causing pathogens, fungi and insects from a mattress or filling material using a chemical or heat process;

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

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

Sec. 2. (a) Within 180 days following enactment of this title, each producer, or such producer's designee, shall join the mattress recycling council and by said date such council shall submit a plan, for approval by the Commissioner, to establish a state-wide mattress stewardship program, as described in this subsection. Retailers may participate in said council. Such mattress stewardship program shall, to the extent it is technologically feasible and economically practical: (1) provide for free, convenient and accessible state-wide opportunities for the receipt of discarded mattresses from any person in the state with a discarded mattress that was used and discarded in the state, including, but not limited to, participating covered entities that accumulate and segregate a minimum of one hundred discarded mattresses for collection at one time; (2) provide for free collection of discarded mattresses from transfer stations that accumulate and segregate fewer than fifty mattresses, provided the transfer stations require such collection due to

space or permit requirements; (3) provide for council-financed end-of-life management for discarded mattresses collected pursuant to subdivisions (2) and (3) of this subsection; (4) provide suitable storage containers at, or make other mutually agreeable storage and transport arrangements for, permitted transfer stations for segregated, discarded mattresses, at no cost to such municipality, provided such transfer station makes space available for such purpose and imposes no fee for placement of such storage container on the transfer station's premises; (5) provide that the organization will conduct research, as needed, related to improving used mattress collection, dismantling, and recycling operations, including pilot programs to test new processes, methods, or equipment on a local, regional, or otherwise limited basis; (6) include a mattress stewardship fee that is sufficient to cover the costs of operating and administering the program.

(b) The plan submitted pursuant to subsection (a) of this section shall: (1) Identify each producer participating in the program; (2) describe the fee structure for the program; (3) establish performance goals for the first two years of the program; (4) identify proposed facilities to be used by the program; (5) describe methods used to coordinate activities with existing used mattress collecting and recycling programs, including existing nonprofit mattress recyclers, and with other relevant parties as appropriate, with regard to the proper management or recycling of discarded or abandoned mattresses, for purposes of providing the efficient delivery of services and avoiding unnecessary duplication of effort and expense; (6) set convenience goals and a timeline for implementing and achieving convenient access to the program; (7) detail how the program will promote the recycling of discarded mattresses consistent with the state’s solid waste management hierarchy; and (8) include a description of the public education program.

(c) The council shall set the amount of the mattress recycling fee that shall be added to the purchase price of a mattress at the point of sale and include the fee amount in the annual budget. The council shall establish and implement a fee structure that covers, but does not exceed, the costs of developing the plan described in subsection (b) of this section, operating and administering the program described in subsection (a) of this section and maintaining a financial reserve sufficient to operate the program over a multi-year period of time in a fiscally prudent and responsible manner. The council shall set the fee as a flat rate and not as a percentage of the purchase price. The council shall maintain all records relating to the program for a period of not less than three years.

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

(e) The Commissioner shall approve the plan for the establishment of the mattress stewardship program, provided such plan meets the requirements of subsections

(a) to (c), inclusive, of this section. Not later than ninety days after submission of the plan pursuant to this section, the Commissioner shall make a determination whether to approve the plan. Prior to making such determination, the Commissioner shall post the plan on the department's Internet web site and solicit public comments on the plan. In the event that the Commissioner disapproves the plan because it does not meet the requirements of subsections (a) to (d), inclusive, of this section, the Commissioner shall describe the reasons for the disapproval in a notice of determination that the Commissioner shall provide to the council. The council shall revise and resubmit the plan to the Commissioner not later than forty-five days after receipt of

notice of the Commissioner's disapproval notice. Not later than forty-five days after receipt of the revised plan, the Commissioner shall review and approve or disapprove the revised plan and provide a notice of determination to the council. The council may resubmit a revised plan to the Commissioner for approval on not more than two occasions. If the council fails to submit a plan that is acceptable to the Commissioner because it does not meet the requirements of subsections (a) to (c), inclusive, of this section, the Commissioner shall modify a submitted plan to make it conform to the requirements of subsections (a) to (c), inclusive, of this section, and approve it. Not later than one hundred eighty days after the approval of a plan pursuant to this section, or one hundred eighty days, in the case of a plan modified by the Commissioner, the council shall implement the mattress stewardship program. Regardless of when the program commences, the program's fiscal year shall commence on January 1.

(f) (1) The council shall submit any proposed substantial change to the program to the Commissioner for approval. For the purposes of this subdivision, "substantial change" means: (A) A change in the processing facilities to be used for discarded mattresses collected pursuant to the program, or (B) a material change to the system for collecting mattresses. If the Commissioner does not disapprove a proposed substantial change within ninety days of receipt of notification of such proposed substantial change, such proposed substantial change shall be deemed approved.

(2) Within 90 days following the end of the program's second fiscal year, the council shall submit updated performance goals to the Commissioner that are based on the experience of the program during the first two years of the program.

(f) The council shall notify the Commissioner of other material changes to the program on an ongoing basis, without resubmission of the plan to the Commissioner for approval. Such changes shall include, but not be limited to, a change in the composition, officers or contact information of the council.

(g) Within 90 days following the end of the program's second fiscal year and every two years thereafter, the council shall propose a mattress stewardship fee for all mattresses sold in this state except those products excluded from the definition of "Mattress" in Section 1. The council may propose a change to the mattress stewardship fee more frequently than once every two years if the council determines such change is needed to avoid funding shortfalls or excesses for the mattress stewardship program. Any proposed mattress stewardship fee shall be reviewed by an auditor to assure that such assessment does not exceed the cost to fund the mattress stewardship program described in subsection (a) of this section and to maintain financial reserves sufficient to operate said program over a multi-year period in a fiscally prudent and responsible manner. Not later than sixty days after the council proposes a mattress stewardship fee, the auditor shall render an opinion to the Commissioner as to whether the proposed mattress stewardship fee is reasonable to achieve the goals set forth in this section. If the auditor concludes that the mattress stewardship fee is reasonable, then the proposed fee shall go into effect. If the auditor concludes that the mattress stewardship fee is not reasonable, the auditor shall provide the council with written notice explaining the auditor's opinion. Not later than sixty days after the council's receipt of the auditor's opinion, the council may either propose a new mattress stewardship fee or provide written comments on the auditor's opinion. If the auditor concludes that the fee is not reasonable, the Commissioner shall decide, based on the auditor's opinion and any comments provided by the council, whether to approve the proposed mattress

stewardship fee. Such auditor shall be selected by the council. The cost of any work performed by such auditor pursuant to the provisions of this subsection and subsection (k) of this section shall be funded by the mattress stewardship fee described in this subsection.

(h) On and after the implementation of the mattress stewardship program, each manufacturer, renovator, retailer, or distributor that sells a mattress to a consumer or to an ultimate end user in the state shall add the mattress stewardship fee, established pursuant to subsection (a) of this section and described in subsection (h) of this section, to the purchase price for such mattress and shall remit the fee collected to the council. In each transaction described above, the fee shall appear on the invoice and shall be accompanied by a brief description of the fee. The council shall determine the rules and procedures that are necessary and proper to implement the collection of the fee in a fair, efficient, and lawful manner. Any producer who fails to participate in such program shall not sell mattresses in this state.

(i) Not later than October fifteenth of each year, the council shall submit an annual report to the Commissioner of the for the most recently completed fiscal year. The Commissioner shall post such annual report on the department's Internet web site. Such report shall include: (1) The tonnage of mattresses collected pursuant to the program from: (A) transfer stations, (B) retailers, and (C) all other covered entities; (2) the tonnage of mattresses diverted for recycling; (3) the weight of mattress materials recycled, as indicated by the weight of each of the commodities sold to secondary markets; (4) the weight of mattress materials sent for disposal at each of the following: (A) Waste-to-energy facilities, (B) landfills, and (C) any other facilities; (5) a summary of the public education that supports the program; (6) an evaluation of the effectiveness of methods and processes used to achieve performance goals of the program; and (7) recommendations for any changes to the program.

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

Sec. 3. Upon implementation of the mattress stewardship program described in section 2 of this act, any covered entity that participates in such program shall not charge for the receipt of discarded mattresses that are discarded in this state provided covered entities may charge a fee for providing the service of collecting mattresses and may restrict the acceptance of mattresses by number, source or physical condition.