

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

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:

1 Section 1. Definitions

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

4 (2) "Commissioner" means the Commissioner of the Department of Environmental
5 Protection;

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

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

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

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

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

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

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

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

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

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

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

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

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

53 "Producer" includes (A) the owner of a trademark or brand under which a mattress is sold,

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

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

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

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

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

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

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

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

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

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

86 Sec. 2. (a) Within 180 days following enactment of this title, each producer, or such
87 producer's designee, shall join the mattress recycling council and by said date such council shall
88 submit a plan, for approval by the Commissioner, to establish a state-wide mattress stewardship
89 program, as described in this subsection. Retailers may participate in said council. Such mattress
90 stewardship program shall, to the extent it is technologically feasible and economically practical:

91 (1) provide for free, convenient and accessible state-wide opportunities for the receipt of
92 discarded mattresses from any person in the state with a discarded mattress that was used and
93 discarded in the state, including, but not limited to, participating covered entities that accumulate
94 and segregate a minimum of one hundred discarded mattresses for collection at one time; (2)
95 provide for free collection of discarded mattresses from transfer stations that accumulate and
96 segregate fewer than fifty mattresses, provided the transfer stations require such collection due to

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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