

MAINE STATE LEGISLATURE

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128th MAINE LEGISLATURE

FIRST REGULAR SESSION-2017

Legislative Document

No. 349

S.P. 115

In Senate, February 2, 2017

An Act To Establish a Mattress Stewardship Program

Reference to the Committee on Environment and Natural Resources suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Secretary of the Senate

Presented by Senator SAVIELLO of Franklin.
Cosponsored by Senator: CARSON of Cumberland.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 38 MRSA §2145** is enacted to read:

3 **§2145. Stewardship program for mattresses**

4 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
5 following terms have the following meanings.

6 A. "Brand" has the same meaning as in section 1771, subsection 1. "Brand" includes
7 both a registered and an unregistered trademark.

8 B. "Consumer" means a purchaser, owner or lessee of a mattress.

9 C. "Discarded mattress" means a mattress that a person discards, abandons or sends
10 for recycling.

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

15 E. "Mattress" means any resilient material or combination of materials that is
16 enclosed by ticking, used alone or in combination with other products, and intended
17 or promoted for sleeping upon. "Mattress" includes any foundation, renovated
18 foundation or renovated mattress. "Mattress" does not include:

19 (1) An unattached mattress pad or an unattached mattress topper, including any
20 item with resilient filling, with or without ticking, intended for use with or on top
21 of a mattress;

22 (2) A sleeping bag or pillow;

23 (3) A car bed;

24 (4) Juvenile products, including a carriage, basket, dressing table, stroller,
25 playpen, infant carrier, lounge pad, crib bumper or any pad for such products;

26 (5) A product that contains liquid-filled or gas-filled ticking, including a
27 waterbed or air mattress that does not contain upholstery material; or

28 (6) Any upholstered furniture not otherwise containing a detachable mattress,
29 including, but not limited to, a fold-out sofa bed or a futon.

30 F. "Mattress core" means the principal support system present in a mattress,
31 including, but not limited to, springs, foam, an air bladder, a water bladder or resilient
32 filling.

33 G. "Mattress stewardship assessment" or "assessment" means the amount added to
34 the purchase price of mattresses sold in the State necessary to cover the cost of
35 collecting, transporting and processing discarded mattresses statewide under a
36 mattress stewardship program established in accordance with this section.

1 H. "Mattress stewardship organization" or "organization" means a nonprofit
2 organization created by one or more producers to design, submit a plan for,
3 implement and operate a mattress stewardship program.

4 I. "Mattress stewardship plan" or "plan" means a plan designed by a producer or
5 mattress stewardship organization for the establishment of a mattress stewardship
6 program.

7 J. "Mattress stewardship program" or "program" means a system implemented for
8 the management of discarded mattresses in accordance with an approved mattress
9 stewardship plan.

10 K. "Operator" means a producer or mattress stewardship organization that
11 implements and operates a mattress stewardship program.

12 L. "Participate" means, with respect to a producer, to, individually or through a
13 mattress stewardship organization, establish and operate a mattress stewardship
14 program in accordance with this section.

15 M. "Producer" means, with regard to a mattress that is sold, offered for sale or
16 distributed for sale in the State, any person that manufactures or renovates the
17 mattress under the person's own brand. "Producer" includes:

18 (1) The owner of the brand under which a mattress is sold, offered for sale or
19 distributed for sale in the State; and

20 (2) Any person that imports a mattress into the United States for sale or
21 distribution in the State, if the mattress is manufactured or renovated by a person
22 that does not have a physical presence in the United States.

23 N. "Recycling" means the transforming or remanufacturing of an unwanted product
24 or the unwanted product's components and by-products into usable or marketable
25 materials. "Recycling" includes incineration or energy recovery or energy generation
26 by means of combusting unwanted products, components and by-products with or
27 without other waste. "Recycling" does not include landfill disposal.

28 O. "Renovate" means to alter a mattress for the purpose of resale including replacing
29 the ticking or filling of a mattress, to add filling to a mattress or to replace mattress
30 components with new or recycled materials. "Renovate" does not include stripping a
31 mattress of its ticking or filling without adding new material or sanitizing or
32 sterilizing a mattress without otherwise altering the mattress.

33 P. "Retailer" means a person that offers a mattress for sale in the State in a retail sale,
34 as defined in Title 36, section 1752, subsection 11, including remote sales conducted
35 through sales outlets, catalogs or the Internet or any other similar electronic means.

36 Q. "Sell" or "sale" means any transfer of title for consideration, including remote
37 sales conducted through sales outlets, catalogs or the Internet or any other similar
38 electronic means.

39 R. "Ticking" means the outermost layer of fabric or material of a mattress.
40 "Ticking" does not include any layer of fabric or material quilted together with, or
41 otherwise attached to, the outermost layer of fabric or material of a mattress.

1 S. "Upholstery material" means all material, loose or attached, between the ticking
2 and the core of a mattress.

3 T. "Wholesaler" means a person that offers a mattress for sale in the State in a sale
4 that is not a retail sale, as defined in Title 36, section 1752, subsection 11, with the
5 intention that the mattress be resold in a subsequent retail sale.

6 **2. Submission of plan.** Except as provided in subsection 9, no later than one year
7 after the effective date of this section, each producer, individually or through a mattress
8 stewardship organization, shall submit a plan for the establishment of a mattress
9 stewardship program to the commissioner for approval. The plan must include:

10 A. Identification and contact information for all persons that will be responsible for
11 the operation of the program and a list of the brands of mattresses to be covered
12 under the program. If the plan is submitted by an organization, it must include a
13 description of the organization, tasks to be performed by the organization and
14 information on how the organization is organized, including administration and
15 management of the organization;

16 B. A description of how the program will provide convenient, free, statewide
17 collection opportunities for discarded mattresses and how the convenience and
18 adequacy of the collection system will be monitored and maintained;

19 C. The criteria to be used by the program in determining whether an entity may serve
20 as a collection location for discarded mattresses under the program. The plan must
21 allow any retailer, wholesaler, municipality, solid waste management facility and
22 other private or public entity that meets those criteria to voluntarily serve as a
23 collection location;

24 D. The names and locations of recyclers, processors, disposal facilities and other
25 entities that may be used by the program for the collection, processing, recycling or
26 disposal of discarded mattresses;

27 E. Information on how discarded mattresses collected through the program will be
28 safely and securely transported, tracked and handled from collection through final
29 disposition;

30 F. A description of the method to be used to ensure that, to the extent economically
31 and technically feasible, collected discarded mattresses are recycled or otherwise
32 responsibly managed. The program must be designed to give preference to the
33 recycling of discarded mattresses over any other disposal method;

34 G. A description of how the amounts of discarded mattresses collected, recycled,
35 processed and disposed of will be measured;

36 H. A description of the education and outreach methods and activities that will be
37 used to provide notice of and encourage use of or involvement in the program by
38 consumers, businesses, local agencies, retailers, wholesalers and solid waste
39 transportation services;

40 I. The establishment of performance goals to measure the success of the program and
41 a description of how the program will be designed to meet or exceed those goals; and

1 J. An anticipated budget for operation of the program and a description of how the
2 program will be financed, including the method of calculating a mattress stewardship
3 assessment that meets the requirements of subsection 6.

4 **3. Approval of plan.** The commissioner shall review a plan submitted under
5 subsection 2 and approve or reject the plan within 90 days of receipt.

6 A. The commissioner shall make a plan submitted under subsection 2 available for
7 public review at least 30 days prior to approving or rejecting the plan.

8 B. The commissioner shall approve a plan if the commissioner determines that the
9 plan demonstrates the ability of the mattress stewardship program to meet the goals
10 specified in subsection 2, paragraph I and meets the other requirements for
11 submission of a plan under subsection 2. The commissioner's approval of a plan must
12 include approval of the method by which the program will be financed. The
13 commissioner shall require the producer or organization submitting the plan to
14 provide an independent audit indicating the appropriateness of the proposed mattress
15 stewardship assessment.

16 C. If a plan is rejected, the commissioner shall provide the reasons for rejecting the
17 plan to the producer or organization submitting the plan. The producer or
18 organization submitting the plan may submit an amended plan within 60 days of a
19 rejection.

20 D. A producer or organization whose plan is rejected by the commissioner may
21 appeal the commissioner's decision in accordance with sections 341-D and 346.

22 **4. Implementation of plan.** A producer or mattress stewardship organization that
23 submitted a plan approved by the commissioner under subsection 3 shall implement the
24 plan no later than 120 days after the date the plan is approved.

25 **5. Amendment of plan.** A change to an approved and implemented mattress
26 stewardship plan must be submitted to the commissioner for review prior to
27 implementation of that change. If the change is not substantive, such as the addition of or
28 a change to collection locations, the addition of a new producer to the program or a
29 change in the contact information or officers of the organization, approval is not needed,
30 but the operator must inform the commissioner within 14 days of implementing the
31 change. The commissioner shall review substantive plan amendments in accordance with
32 subsection 3.

33 **6. Stewardship assessment.** An operator shall administer a mattress stewardship
34 assessment to be applied to all mattresses covered by the program sold in the State. The
35 amount of the assessment must be approved by the commissioner in accordance with
36 subsection 3 and must be sufficient to recover, but may not be designed to exceed, the
37 cost of the program. If the funds generated by the assessment exceed the amount
38 necessary to operate the program, excess funds must be used to reduce future assessments
39 or improve services under the program.

40 A. A mattress stewardship assessment must be added to the cost of all mattresses
41 covered by the program sold to retailers and wholesalers in the State. A retailer or
42 wholesaler shall add the assessment to the purchase price of mattresses sold by that

1 retailer or wholesaler. The assessment must be clearly visible on invoices or
2 functionally equivalent billing documents as a separate line item. An assessment may
3 not be imposed at the time a discarded mattress is collected. The collection of the
4 assessment must commence no later than the implementation date established in
5 subsection 4.

6 B. A producer participating in a mattress stewardship organization shall remit to the
7 organization on a quarterly basis payment of the mattress stewardship assessment for
8 all mattresses the producer sells in the State.

9 **7. Sales prohibition.** Upon implementation of a mattress stewardship plan under
10 subsection 4, a producer may not sell or offer for sale a mattress in the State unless the
11 producer, or a mattress stewardship organization that the producer has created or joined,
12 participates in a mattress stewardship program established in accordance with this
13 section.

14 **8. Collection locations.** This subsection applies to collection locations for discarded
15 mattresses under a program.

16 A. A retailer, a wholesaler, a municipality, a solid waste management facility and
17 any other private or public entity may voluntarily serve as a collection location for
18 discarded mattresses under an approved and implemented plan, as long as the
19 operator determines that the collection location meets the criteria for collection
20 locations established under the plan.

21 B. The operator must fully underwrite the costs of pickup and transportation of
22 discarded mattresses from each collection location established under the program and
23 may not charge an entity serving as a collection location for the cost of such services.

24 C. An entity serving as a collection location may not refuse collection of a discarded
25 mattress based on the brand of the mattress. An operator may not refuse the pickup
26 or transportation of a collected discarded mattress from a collection location based on
27 the brand of the mattress.

28 D. An entity serving as a collection location may not impose on consumers any fee
29 relating to the collection of discarded mattresses. An entity serving as a collection
30 location may not impose any fee on an operator as a condition of agreeing to serve as
31 a collection location under the program.

32 **9. New producers.** A new producer must notify the commissioner and take other
33 action in accordance with this subsection prior to selling or offering to sell a mattress in
34 the State. For the purposes of this subsection, "new producer" means a producer that is
35 not participating in an existing program established under this section that seeks to sell or
36 offer for sale a mattress in the State on or after the date that an approved mattress
37 stewardship plan is first implemented under subsection 4.

38 A. Upon receiving notification under this subsection from a new producer, the
39 commissioner shall list the producer as a new producer on the department's publicly
40 accessible website.

41 B. No later than 90 days following a new producer's notification under this
42 subsection to the commissioner, the producer shall submit a plan to the commissioner

1 in accordance with subsection 2 or join an existing organization operating a program
2 in the State.

3 C. If a new producer fails to submit a plan or join an existing organization within the
4 90-day period under paragraph B, the producer may not sell or offer to sell a mattress
5 in the State after the expiration of the 90-day period.

6 A new producer that fails to submit a plan or join an existing organization within the time
7 limits described in this subsection may not sell or offer for sale a mattress in the State
8 until the producer submits a plan that is approved by the commissioner or joins an
9 existing organization.

10 **10. List of producers and brands.** The department shall post on its publicly
11 accessible website a list of the producers participating and brands included in a mattress
12 stewardship program.

13 **11. Annual report.** By October 15th of the calendar year after the calendar year in
14 which an approved mattress stewardship plan is implemented under subsection 4, and
15 annually thereafter, the operator of a mattress stewardship program shall submit a report
16 to the commissioner regarding the activities carried out by the program during the
17 previous calendar year. The report must include, but is not limited to:

18 A. The total tonnage of discarded mattresses collected by the program, as well as the
19 specific tonnages collected from municipalities, retailers and all other entities serving
20 as collection locations; the total tonnage of discarded mattresses diverted for
21 recycling; the weight of mattress materials recycled, as indicated by the weight of
22 each of the commodities sold to secondary markets; and the weight of mattress
23 materials sent for disposal or processing at disposal facilities and other entities;

24 B. Based on the mattress stewardship assessment collected pursuant to the mattress
25 stewardship program, the total number of mattresses sold in the State by all producers
26 participating in the program;

27 C. The location of each collection location established under the program and an
28 evaluation of the convenience and adequacy of the collection system implemented by
29 the program;

30 D. A description of the manner in which discarded mattresses were collected,
31 transported, sorted, consolidated and processed by the program;

32 E. A description of the methods and activities used by the program for education and
33 outreach, including examples of any educational materials developed and used by the
34 program, and an evaluation of the effectiveness of the education and outreach efforts
35 implemented by the program;

36 F. The total cost of implementing the mattress stewardship plan and operating the
37 mattress stewardship program during the reporting period, as determined by an
38 independent financial audit funded from the mattress stewardship assessment. The
39 report of the total cost must include a breakdown of operation, collection,
40 transportation, disposition and communication costs;

41 G. An evaluation of the effectiveness of the methods used to achieve the
42 performance goals of the program included in the plan pursuant to subsection 2,

1 paragraph I, as well as an update to the performance goals, if necessary, based on the
2 experience of the program during the previous calendar year; and

3 H. Any other recommendations for change to the program to improve the
4 convenience of the collection system, education or outreach efforts or program
5 evaluation methods or to otherwise better facilitate the collection, recycling and
6 management of discarded mattresses in the State.

7 **12. Administration and enforcement; fees.** The department shall enforce this
8 section and may adopt rules as necessary for the purposes of implementing, administering
9 and enforcing this section. Rules adopted pursuant to this subsection are routine technical
10 rules as defined in Title 5, chapter 375, subchapter 2-A.

11 The department shall charge a reasonable application fee, not to exceed \$10,000, to be
12 paid by an applicant under subsection 2 for review and approval of a mattress stewardship
13 plan. The department may establish a reasonable annual fee, not to exceed the greater of
14 \$25,000 and 1% of the total program costs as set forth in the independent financial
15 auditing report required under subsection 11, paragraph F, to be paid by an operator, to
16 cover the department's actual costs for annual report review, administration and
17 enforcement.

18 **13. Antitrust exclusions.** A producer or mattress stewardship organization,
19 including a producer's or organization's officers, members, employees and agents that
20 develop a plan for, implement and operate a mattress stewardship program in accordance
21 with this section, is immune from liability for the producer's or organization's conduct
22 under state laws relating to antitrust, restraint of trade, unfair trade practices and other
23 regulation of trade or commerce only to the extent necessary to develop a plan for,
24 implement and operate the program.

25 SUMMARY

26 This bill provides for the establishment of a new stewardship program in the State for
27 discarded mattresses. Under the bill, a producer of mattresses, or an organization
28 comprising one or more producers of mattresses, submits a plan for the establishment of a
29 mattress stewardship program to the Commissioner of Environmental Protection for
30 approval. Once approved, a program operates to provide convenient, free statewide
31 collection opportunities for discarded mattresses, and discarded mattresses collected
32 through the program are recycled or otherwise responsibly managed. A program is
33 funded through the imposition of a mattress stewardship assessment, subject to review
34 and approval by the commissioner, which is added to the purchase price of all mattresses
35 sold in the State.