

**HOUSE . . . . . No. 988**

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**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>

**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.