

Enrolled
Senate Bill 1576

Sponsored by Senators MANNING JR, BEYER, DEMBROW, SOLLMAN, Representative BYNUM; Senators FREDERICK, PATTERSON, PROZANSKI, TAYLOR, WAGNER, Representatives ALONSO LEON, FAHEY, HELM, HOLVEY, MEEK, NATHANSON, REYNOLDS, SCHOUTEN, WILDE (Pre-session filed.)

CHAPTER

AN ACT

Relating to mattresses; creating new provisions; amending ORS 459.995; and prescribing an effective date.

Be It Enacted by the People of the State of Oregon:

MATTRESS STEWARDSHIP

SECTION 1. The Legislative Assembly finds and declares that:

(1) It is in the best interests of the State of Oregon for producers of mattresses to take responsibility for developing, implementing and administering a statewide system for the financing, collection and environmentally sound management of discarded mattresses; and

(2) It is the State of Oregon's policy that a statewide system for the financing, collection and environmentally sound management of discarded mattresses:

(a) Provide free, convenient and accessible opportunities for collection of mattresses discarded in this state from any person, in both the urban and rural areas of this state;

(b) Be technologically feasible and economically practical; and

(c) Be consistent with the policies for materials management set forth in ORS 459.015 (2).

SECTION 2. As used in sections 1 to 14 of this 2022 Act:

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

(2) "Consumer" means a person who is the purchaser, by retail sale, of a mattress for final delivery and use in this state.

(3) "Discarded mattress" means a mattress that has been used, and abandoned or discarded, in this state.

(4) "Environmentally sound management" includes, but is not limited to, the following management practices, implemented in a manner that is designed to protect public health and safety and the environment:

(a) Adequate record keeping;

(b) Keeping detailed documentation of the methods used to:

(A) Manage discarded mattresses; and

(B) Track and document the fate of discarded mattresses from collection through final disposition within this state and outside this state;

(c) Performance audits and inspections of recyclers, haulers and other parties as determined by a stewardship organization;

(d) Compliance with worker health and safety requirements; and

(e) Maintenance of adequate liability insurance for a stewardship organization and contractors working for the stewardship organization.

(5) "Final disposition" means the point beyond which no further processing takes place and a discarded mattress and its components have been recycled, renovated or disposed of.

(6) "Foundation" means a ticking-covered structure that is used to support a mattress or sleep surface and that may be constructed of frames, foam, box springs or other materials, used alone or in combination.

(7)(a) "Mattress" means:

(A) A resilient material or combination of materials that is enclosed by a ticking, is used alone or in combination with other products and is intended for or promoted for sleeping upon; or

(B) A foundation.

(b) "Mattress" does not mean:

(A) An unattached mattress pad or unattached mattress topper, with or without resilient filling or ticking, that is intended to be used with or on top of a mattress;

(B) A sleeping bag;

(C) A pillow;

(D) A car bed, crib mattress or bassinet mattress;

(E) A carriage, basket, dressing table, stroller, playpen, infant carrier, lounge pad, crib bumper or other product manufactured for young children or the pad for a product described in this subparagraph;

(F) A water bed, an air mattress or another product that contains liquid- or gas-filled ticking and that does not contain upholstery material between the ticking and the mattress core; or

(G) A foldout sofa bed, futon, futon mattress or upholstered furniture.

(8) "Mattress core" means the principal support system that is present in a mattress and that may be constructed of materials such as springs, foam, air or water bladders or resilient filling.

(9) "Mattress stewardship assessment" means the amount added at retail sale to the purchase price of a mattress to cover the costs of a mattress stewardship program.

(10) "Mattress stewardship program" means a statewide program for the collection of discarded mattresses and environmentally sound management of program mattresses that is operated by a stewardship organization pursuant to a plan approved by the Department of Environmental Quality under section 6 of this 2022 Act.

(11) "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.

(12) "Nonprofit organization" means an organization or group of organizations described in section 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a) of the Internal Revenue Code.

(13) "Person" means the United States, the state or a public or private corporation, local government unit, public agency, individual, partnership, association, firm, trust, estate or other legal entity.

(14) "Premium service" means a service such as at-home pickup service, including curbside pickup service.

(15) "Producer" means any person, irrespective of the selling technique used, including that of remote sale, that:

(a) Manufactures a mattress that is sold, offered for sale or distributed in this state;

(b) Is 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; or

(c) Imports a mattress into the United States that is sold or offered for sale in this state.

(16)(a) "Program mattress" means a discarded mattress that a stewardship organization will provide environmentally sound management for under a mattress stewardship program.

(b) "Program mattress" does not mean a mattress transported from outside this state to be discarded in this state.

(17)(a) "Renovate" means to alter a discarded mattress for resale through replacing the ticking or filling, adding additional filling or replacing components of the discarded mattress with new or recycled materials.

(b) "Renovate" does not mean:

(A) Stripping a discarded mattress of the ticking or filling without adding new material;

or

(B) The sanitization or sterilization of a discarded mattress without other alteration to the discarded mattress.

(18) "Renovator" means a person that renovates discarded mattresses.

(19) "Retailer" means a person that offers new, used or renovated mattresses for retail sale.

(20) "Retail sale" means sale to a consumer in this state by any means and for any purpose other than resale, including but not limited to sale by remote offerings such as sales outlets, catalogs or the Internet.

(21) "Sanitization" means the direct application of chemicals to a mattress to kill pathogens that cause human disease.

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

(23) "Stewardship organization" means a nonprofit organization designated by a producer or group of producers to implement a mattress stewardship program.

(24)(a) "Ticking" means the outermost layer of fabric or related material of a mattress.

(b) "Ticking" does not mean any layer of fabric or material quilted together with, or otherwise attached to, the outermost layer of fabric or material of a mattress.

SECTION 3. (1) Except as provided in subsection (3) of this section, a producer, renovator or retailer may not sell or offer for sale any mattress to any person in this state unless the producer, renovator or retailer is registered with a stewardship organization with a plan approved by the Department of Environmental Quality under section 6 of this 2022 Act.

(2) On and after the date that a mattress stewardship program is implemented, a retailer:

(a) May purchase a mattress only from a producer or renovator that is registered with a stewardship organization as of the date of purchase as evidenced by information made available by a stewardship organization pursuant to subsection (4) of this section;

(b) Shall collect, at the point of retail sale, the mattress stewardship assessment established pursuant to a plan approved by the department under section 6 of this 2022 Act and remit the mattress stewardship assessment to the stewardship organization that implements the mattress stewardship program; and

(c) Shall provide to consumers, at the point of retail sale, information on available collection opportunities for discarded mattresses through the mattress stewardship program.

(3) A retailer registered with a stewardship organization that purchased a mattress from a producer or renovator in compliance with subsection (2)(a) of this section is not in violation of subsection (1) of this section if, at the time the retailer sells the mattress to a consumer, the producer or renovator that the retailer purchased the mattress from is no longer registered with a stewardship organization.

(4) A stewardship organization shall make available on the stewardship organization's website and on request:

(a) Information on the brands owned by all producers and renovators registered with the stewardship organization;

(b) Information on available collection opportunities; and

(c) Any other information necessary for retailers to comply with subsection (2) of this section.

(5) A retailer shall identify the mattress stewardship assessment as a separate line item on the receipt for a mattress provided to a consumer at the point of sale. The mattress stewardship assessment may not be described on the receipt as an Oregon recycling fee.

(6)(a) Subject to paragraph (b) of this subsection, a stewardship organization may use a mattress stewardship assessment collected in this state only to pay the costs necessary to plan, implement, administer and operate a mattress stewardship program in this state.

(b) A stewardship organization may not use any moneys collected through a mattress stewardship assessment to pay penalties assessed against the stewardship organization under ORS 459.995.

(7) Nothing in this section prevents a stewardship organization from, with notice to the department, coordinating efforts for carrying out a mattress stewardship program in this state with programs for the collection and environmentally sound management of discarded mattresses in other states.

(8) The department shall maintain on its website a list of all producers, renovators and retailers that are in compliance with sections 1 to 14 of this 2022 Act.

SECTION 4. (1) In a form and manner prescribed by the Department of Environmental Quality, a stewardship organization shall submit to the department a plan for the development and implementation of a mattress stewardship program. The plan must:

(a) Describe how the stewardship organization will manage and administer a mattress stewardship program.

(b) Identify program mattresses.

(c) Describe how discarded mattresses that are received through collection sites or collection events and that are not program mattresses will be handled.

(d) Identify each producer, renovator and retailer that is registered with the stewardship organization as of 30 days before the plan is submitted to the department.

(e) Include a description of how the stewardship organization will provide for the environmentally sound management of program mattresses, regardless of the producer, with no charge at the point of collection of discarded mattresses, except that the stewardship organization may allow for a person that provides a premium service under the mattress stewardship program to charge for the additional cost of that premium service. The description shall include, at a minimum:

(A) Identification of the proposed transporters and recyclers that the stewardship organization will contract with to transport and process program mattresses and the recycling methods that the recyclers will use;

(B) The auditing, inspection and other procedures that will be used by the stewardship organization and the frequency at which the procedures will be implemented to ensure that all entities the stewardship organization contracts with to implement the mattress stewardship program engage in environmentally sound management practices; and

(C) A description of the processes that will be used to ensure that the recyclers contracted with by the stewardship organization to process program mattresses will comply with environmentally sound management practices.

(f) Provide service as described in section 5 of this 2022 Act.

(g) Establish performance goals for:

(A) The collection target and recycling rates of program mattresses; and

(B) Public awareness of the mattress stewardship program.

(h) Include an anticipated annual operating budget, as described in subsection (2) of this section, for the mattress stewardship program for two years of operation of the program, beginning with the year in which the plan is submitted to the department.

(i) Include a proposed mattress stewardship assessment method for collecting the mattress stewardship assessment from retailers and a method for ensuring the assessment is remitted to the stewardship organization. The mattress stewardship assessment must be a flat amount that applies equally to each mattress sold to a consumer in this state and must be sufficient to recover, but not exceed, the costs of establishing and administering the mattress stewardship program, including but not limited to all costs incurred for the environmentally sound management of program mattresses during each stage of management, from collection of the program mattresses through final disposition of the program mattresses.

(j) Provide a mechanism to mitigate the costs associated with collection and management of discarded mattresses that are illegally dumped. The proposed mechanism must take into account the cost of one or more incentives to encourage collectors to properly dispose of discarded mattresses and discourage illegal dumping, and may include but need not be limited to proposals for funding of cleanup activities, for education and outreach or for studies to evaluate the causes of illegal dumping. The proposed mechanism may not require the stewardship organization or collectors to enter private property without authorization from the property owner or other appropriate authority.

(k) Provide for public education, advertising and promotion of discarded mattress collection opportunities statewide and on a regular basis.

(L) Include a closure plan that addresses how the stewardship organization will settle the affairs of the mattress stewardship program in the event of dissolution of the stewardship organization or cessation of operations of the mattress stewardship program by the stewardship organization in this state.

(m) Describe methods that will be used by the stewardship organization to coordinate activities with existing recycling programs, including existing nonprofit organizations that are mattress recyclers, to further the environmentally sound management of discarded mattresses.

(n) Address procedures for identifying substantial or material changes to the system for collecting discarded mattresses for which a plan amendment will be required under section 7 of this 2022 Act.

(2) The anticipated annual operating budget for a mattress stewardship program shall include, but need not be limited to, budget line items relating to:

(a) The collection, transportation and processing of program mattresses;

(b) The administrative costs of the mattress stewardship program to the stewardship organization;

(c) The costs of compensating collection sites for their reasonable actual costs to collect and manage discarded mattresses;

(d) The anticipated amount of moneys that the stewardship organization will hold in unallocated reserve funds for the mattress stewardship program; and

(e) The annual fee to be paid to the department pursuant to section 9 (3) of this 2022 Act.

(3) In operating a mattress stewardship program, a stewardship organization shall:

(a) Meet the requirements of the plan submitted under this section, as approved by the department pursuant to section 6 of this 2022 Act.

(b) Meet or exceed the service requirements described in section 5 of this 2022 Act.

SECTION 5. (1)(a) A plan submitted under section 4 of this 2022 Act must provide for convenient service through, at a minimum:

(A) Providing for at least one permanent collection site in every county with a population of 10,000 people or more and an additional 25 collection sites distributed throughout this state in a manner to extend convenient service to residents;

(B) Holding at least one collection event per year in counties that have a population of less than 10,000 people and that do not have a permanent collection site;

(C) Providing for permanent collection sites that are in a county with a population of 10,000 people or more, to be staffed and open to the public at least six days per week;

(D) Providing for permanent collection sites that are in a county with a population of less than 10,000 people, to be staffed and open to the public at least one day per week; and

(E) Providing a convenient method for the public to access a list of collection opportunities.

(b) A plan may provide for methods for providing convenient service that are alternative methods to those provided for in paragraph (a) of this subsection if, based on a geographic information systems analysis or additional information, the alternative methods will result in providing service to residents throughout this state at an equivalent level of convenient service compared with the methods provided for under paragraph (a) of this subsection.

(2) A stewardship organization shall:

(a) Establish and maintain collection sites at:

(A) Permitted solid waste facilities; or

(B) Other suitable sites for the collection of discarded mattresses, if the sites do not impose a fee for making space available for storage containers.

(b) Provide for storage containers at no charge at, and transportation and recycling of program mattresses from, collection sites described in paragraph (a) of this subsection.

(c) Provide financial compensation to collection sites described in paragraph (a) of this subsection for their reasonable actual costs to collect and manage discarded mattresses.

(d) Provide for bulk pickup service at no cost to collect a minimum of 100 properly source separated program mattresses at one time from persons including, but not limited to:

(A) Public bodies as defined in ORS 174.109;

(B) Retailers;

(C) Public or private disposal, transfer or material or energy recovery sites or facilities;

(D) Health care, educational or military facilities; and

(E) Hotels, motels, inns and other establishments that provide transient lodging.

(e) Offer organizations that recycle or renovate discarded mattresses the opportunity to participate as collection sites.

(f) Prioritize renovation or recycling over disposal in providing for the environmentally sound management and final disposition of program mattresses under the mattress stewardship program.

(g) Notify retailers that sell or offer for sale mattresses made or sold by producers or renovators registered with the stewardship organization about the mattress stewardship program and provide retailers with information necessary to comply with sections 1 to 14 of this 2022 Act.

SECTION 6. (1) The Department of Environmental Quality shall approve, reject or request additional information for a plan submitted under section 4 of this 2022 Act or an amendment to a plan submitted under section 7 of this 2022 Act no later than 90 days after the date the department receives the plan or plan amendment from the stewardship organization. The department shall post a plan or plan amendment on its website and provide for a public comment period of no less than 30 days before approving, rejecting or requesting additional information on the plan or plan amendment.

(2)(a) If the department rejects, or requests additional information for, the plan or plan amendment, the department must provide the stewardship organization with the reasons, in writing, that the plan or plan amendment does not meet the plan requirements of section 4 of this 2022 Act. The stewardship organization shall have 60 days from the date that the rejection or request for additional information is received to submit to the department any additional information necessary for the approval of the plan or plan amendment. The department shall review and approve or disapprove the revised plan or plan amendment no

later than 45 days after the date the department receives the revised plan or plan amendment.

(b) A stewardship organization may resubmit a revised plan or plan amendment to the department on not more than two consecutive occasions. If, after the second consecutive resubmission, the department determines that the revised plan or plan amendment does not meet the plan requirements of section 4 of this 2022 Act, the department shall modify the plan or plan amendment as necessary for the plan or plan amendment to meet the requirements of section 4 of this 2022 Act and approve the plan or amended plan.

(3) The department's rejection of, or request for additional information for, a plan amendment does not relieve a stewardship organization from continuing to implement a mattress stewardship program in compliance with a previously approved plan pending a final action by the department on the plan amendment.

(4) Beginning no later than 90 days after a plan or amended plan is approved under this section, a stewardship organization must implement a mattress stewardship program as described in the plan or amended plan.

(5)(a) Upon a written finding described in paragraph (b) of this subsection, and after providing the stewardship organization an opportunity to respond to the finding, the department may, in addition to any other penalty provided by law:

(A) Revoke approval of a plan or plan amendment under this section or require a stewardship organization to resubmit a plan or plan amendment; or

(B) Require a stewardship organization to meet reporting requirements in addition to those required under section 9 of this 2022 Act, as the Environmental Quality Commission determines by rule or order may be appropriate to avoid future violations.

(b) Paragraph (a) of this subsection applies only if the department finds:

(A) That a stewardship organization has violated a provision of sections 1 to 14 of this 2022 Act; and

(B) That the violation has a material impact on the implementation and administration of a plan previously approved by the department under this section.

SECTION 7. (1) A stewardship organization shall submit to the Department of Environmental Quality for approval an amendment to a plan that has been approved by the department under section 6 of this 2022 Act if, at any time:

(a) There is a substantial or material change, as provided for under section 4 (1)(n) of this 2022 Act, to the system for collecting discarded mattresses;

(b) The stewardship organization proposes a change to the mattress stewardship assessment; or

(c) The department requests an amendment to the plan in order to address a specific finding by the department that:

(A) The administrative costs of the stewardship organization for the mattress stewardship program equaled 20 percent or more of the organization's total annual operating budget for the program during the prior calendar year; or

(B) The unallocated reserve funds held by the stewardship organization for the mattress stewardship program during the prior calendar year equaled 75 percent or more of the organization's total annual operating budget for the program during the year.

(2) The department may not request an amendment under subsection (1)(c) of this section until two years after the implementation of a mattress stewardship program by the stewardship organization.

(3) Not less than once per month, a stewardship organization shall provide written notice to the department of any changes made during the previous month to a plan approved by the department under section 6 of this 2022 Act that are changes for which an amendment is not required under subsection (1) of this section. Changes subject to notice under this subsection include, but are not limited to:

(a) A change in the location or the number of permanent collection sites identified in the plan;

(b) A change in the producers or renovators that are registered with the stewardship organization; or

(c) A change in the recyclers or renovators that manage the discarded mattresses collected by the stewardship organization under the program.

(4) If the department determines that a change for which notice was given under subsection (3) of this section has a material impact on a previously approved plan, the department may require the stewardship organization to submit an amendment under subsection (1) of this section, regardless of whether the change has been implemented.

SECTION 8. (1)(a) A plan submitted under section 4 of this 2022 Act and approved by the Department of Environmental Quality under section 6 of this 2022 Act is valid for five years.

(b) At least 180 days before the expiration of a plan approved under section 6 of this 2022 Act, the stewardship organization shall submit the plan to the department to be reapproved for an additional five years. A plan submitted under this paragraph must include proposed improvements based on the results of the study conducted under section 9 (4)(a) of this 2022 Act.

(2) Notwithstanding section 4 of this 2022 Act, the initial plan submitted by a stewardship organization is not required to include the information described in section 4 (1)(g) or (L) of this 2022 Act. A stewardship organization operating a mattress stewardship program shall first submit the information described in section 4 (1)(g) and (L) of this 2022 Act pursuant to the notification procedures set forth in section 7 (3) of this 2022 Act no later than two years after implementation of the mattress stewardship program.

SECTION 9. (1) A stewardship organization that implements a mattress stewardship program pursuant to a plan approved by the Department of Environmental Quality under section 6 of this 2022 Act shall, no later than July 1 of each year, submit for review and approval to the department:

(a) The annual report provided for under subsection (2) of this section for the preceding calendar year;

(b) An updated budget for the upcoming calendar year that follows the budget requirements provided for in section 4 of this 2022 Act; and

(c) The annual fee required under subsection (3) of this section.

(2) The annual report submitted by a stewardship organization shall include, at a minimum, with respect to mattresses collected in this state:

(a) The mattress stewardship program's costs and revenues for the previous calendar year;

(b) Information on the number and tonnage of discarded mattresses collected pursuant to the mattress stewardship program during the previous calendar year at a sufficient level of disaggregation to determine how the program is performing in different regions of the state;

(c) Information on the number and tonnage of program mattresses collected pursuant to the mattress stewardship program for recycling during the previous calendar year at a sufficient level of disaggregation to determine how the program is performing in different regions of the state;

(d) Information on the number and tonnage of program mattresses collected pursuant to the mattress stewardship program for renovation during the previous calendar year at a sufficient level of disaggregation to determine how the program is performing in different regions of the state;

(e) The weight of mattress materials recycled and the final disposition of mattress materials, by weight and by material, sold as commodities in secondary markets;

(f) 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;

(g) An evaluation of why the mattress materials sent for disposal were not recycled and a description of efforts that will be taken to increase the recycling rate of mattress materials under the mattress stewardship program;

(h) The number of discarded mattresses received through collection that were not program mattresses, the number of discarded mattresses that were illegally dumped as reported to the department, an analysis of how the data required by this paragraph has changed over time and strategies the stewardship organization will take to address discarded mattresses that are not program mattresses and discarded mattresses that are illegally dumped;

(i) The total sales of mattresses sold to consumers in this state in the previous calendar year by producers, renovators and retailers registered with the stewardship organization;

(j) A summary of the public education offered in the previous calendar year that supports the mattress stewardship program and examples of public education materials;

(k) An evaluation of the effectiveness of methods and processes used to achieve the goals of the mattress stewardship program, information on progress made toward achieving the goals, an explanation of why any goals were not met during the previous calendar year and any efforts that will be taken to improve progress toward meeting the goals in the future, if applicable;

(L) A report by an independent certified public accountant, retained by the stewardship organization at the stewardship organization's expense, on the accountant's audit of the stewardship organization's financial statements;

(m) A report on the outcome of audits of entities the stewardship organization contracts with, as provided in section 4 (1)(e)(B) and (C) of this 2022 Act; and

(n) Recommendations for any changes to the mattress stewardship program, including the potential utility of a ban on disposal of mattresses and information relevant to compliance with the plan.

(3) The department shall establish an annual fee to be paid by the stewardship organization that is reasonably calculated to cover the costs to the department to administer, implement and enforce sections 1 to 14 of this 2022 Act. The department shall provide notice to a stewardship organization no later than April 1 of each year of the annual fee for the upcoming calendar year. Fees collected by the department under this section shall be deposited in the State Treasury to the credit of the Mattress Stewardship Fund established under section 12 of this 2022 Act.

(4) In addition to meeting the requirements of subsection (1) of this section, a stewardship organization shall:

(a) Conduct during the third year of implementing a mattress stewardship program, and in consultation with community organizations, a study evaluating the most effective methods of providing discarded mattress collection services to low-income individuals and multifamily housing structures.

(b) Include in the annual report required for the third year of implementing a mattress stewardship program under a plan or initial plan approved under section 6 of this 2022 Act:

(A) A report to the department on the scope of discarded mattresses in this state that are not being collected as part of the stewardship organization's mattress stewardship program and recommendations on how to direct the discarded mattresses to, and include them, in the stewardship organization's program; and

(B) A life cycle assessment report of mattresses sold in this state.

(5)(a) The department may require a stewardship organization to have a performance audit of the mattress stewardship program conducted and to include a report on the performance audit in the next required annual report. A performance audit required under this subsection must conform to audit standards established by nationally recognized entities in-

cluding, but not limited to, the United States Government Accountability Office and the National Association of State Auditors, Comptrollers and Treasurers.

(b) Except as provided in paragraph (c) of this subsection, the department may require a performance audit to be conducted under paragraph (a) of this subsection no more than once every five years. The department may not first request a performance audit to be conducted until the third year that a stewardship organization has implemented a mattress stewardship program.

(c) The department may require a performance audit to be conducted under paragraph (a) of this subsection less than five years after the last time that a performance audit was conducted, if the department determines that the performance audit is warranted based on information contained in a plan amendment submitted to the department under section 7 of this 2022 Act.

(6) The department may not disclose any confidential proprietary information obtained by the department under this section or section 4, 5, 6 or 7 of this 2022 Act.

SECTION 10. (1)(a) The Director of the Department of Environmental Quality shall appoint a mattress stewardship program advisory committee of not more than 10 members representing the interests of the following entities in the stewardship of discarded mattresses:

- (A) Local governments;
- (B) The solid waste industry;
- (C) The environmental community; and
- (D) The public.

(b) The director may not appoint to the advisory committee any person that has or who may have a pecuniary interest in any contract awarded by a stewardship organization as part of the implementation of a mattress stewardship program.

(2) The advisory committee shall meet not less than once annually and shall consult with stewardship organizations operating mattress stewardship programs and advise the Department of Environmental Quality regarding:

(a) The review and approval of any plan for the development and implementation of a mattress stewardship program submitted to the department under section 4 of this 2022 Act;

(b) The review and approval of any amendment to a plan submitted under section 7 of this 2022 Act; and

(c) The review of annual reports submitted by a stewardship organization under section 9 of this 2022 Act.

SECTION 11. (1) The Department of Environmental Quality shall have the power to enter upon and inspect, at any reasonable time, any public or private property, premises or place for the purpose of investigating either an actual or suspected violation of sections 1 to 14 of this 2022 Act.

(2) A stewardship organization shall retain all records related to implementation of a mattress stewardship program for not less than three years and make the records available for inspection by the department upon request.

SECTION 12. The Mattress Stewardship Fund is established, separate and distinct from the General Fund. All moneys in the Mattress Stewardship Fund are continuously appropriated to the Department of Environmental Quality and may be used only to pay the costs of administering, implementing and enforcing sections 1 to 14 of this 2022 Act.

SECTION 13. (1) The Legislative Assembly declares that the collaboration of producers and stewardship organizations to develop and implement mattress stewardship programs is in the best interests of the public. Therefore, the Legislative Assembly declares its intent that the establishment, administration, collection or disbursement of the mattress stewardship assessment shall be exempt from state antitrust laws. The Legislative Assembly further declares its intent to provide immunity for the establishment, administration, collection or disbursement of the mattress stewardship assessment from federal antitrust laws.

(2)(a) This section does not authorize any person to engage in activities or to conspire to engage in activities that constitute per se violations of state or federal antitrust laws that are not authorized under sections 1 to 14 of this 2022 Act.

(b) This section does not apply to any activities related to:

(A) Pricing agreements for mattresses unrelated to the mattress stewardship assessment;

(B) Agreements regarding the output or production of mattresses; or

(C) Restrictions on the geographic area in which, or the consumers to whom, mattresses will be sold.

(3) The Department of Environmental Quality shall actively supervise the conduct of a stewardship organization in establishing, administering, collecting and disbursing the mattress stewardship assessment.

SECTION 14. The Environmental Quality Commission may adopt rules as necessary to implement sections 1 to 14 of this 2022 Act.

SECTION 15. ORS 459.995 is amended to read:

459.995. (1) Except as provided in subsection (2) of this section, in addition to any other penalty provided by law:

(a) Any person who violates ORS 459.205, 459.270, 459.272, 459.386 to 459.405, 459.705 to 459.790, 459A.005 to 459A.620, 459A.310 to 459A.335, 459A.860 to 459A.975 or 646A.080, or any rule or order of the Environmental Quality Commission pertaining to the disposal, collection, storage or reuse or recycling of solid wastes, as defined by ORS 459.005, or any rule or order pertaining to the disposal, storage or transportation of waste tires, as defined by ORS 459.705, or any rule or order pertaining to the sale of novelty items that contain encapsulated liquid mercury, incurs a civil penalty not to exceed \$25,000 per day for each day of the violation.

(b) Any person who violates the provisions of ORS 459.420 to 459.426 incurs a civil penalty not to exceed \$500 for each violation. Each battery that is disposed of improperly is a separate violation. Each day an establishment fails to post the notice required under ORS 459.426 is a separate violation.

(c) For each day a city, county or metropolitan service district fails to provide the opportunity to recycle as required under ORS 459A.005, the city, county or metropolitan service district incurs a civil penalty not to exceed \$500 for each violation.

(d) Any person who violates the provisions of ORS 459.247 (1)(f) incurs a civil penalty not to exceed \$500 for each violation. Each covered electronic device that is disposed of improperly is a separate violation.

(e) Any retailer that violates the provisions of ORS 459A.825 (1) or (2)(b) **or section 3 of this 2022 Act** incurs a civil penalty not to exceed \$100 per day for each day of the violation.

(f) Any producer **or renovator** that violates the provisions of ORS 459A.825 (1) **or section 3 of this 2022 Act** incurs a civil penalty not to exceed \$1,000 per day for each day of the violation.

(g) Any stewardship organization that violates the provisions of ORS 459A.825 (2)(a), 459A.827, 459A.830 to 459A.837 or 459A.842 **or sections 1 to 14 of this 2022 Act** incurs a civil penalty not to exceed \$1,000 per day for each day of the violation.

(2) Any product manufacturer or package manufacturer who violates ORS 459A.650 to 459A.665 or any rule adopted under ORS 459A.650 to 459A.665 incurs a civil penalty not to exceed \$1,000 per day for each day of the violation. A violation of ORS 459A.650 to 459A.665 is not subject to additional penalties under subsection (1) of this section.

(3) Any civil penalty authorized by subsection (1) or (2) of this section shall be imposed in the manner provided by ORS 468.135.

MISCELLANEOUS

SECTION 16. Sections 1 to 14 of this 2022 Act and the amendments to ORS 459.995 by section 15 of this 2022 Act apply to all producers, renovators and retailers engaging in the activities set forth in section 3 (1) of this 2022 Act on or after January 1, 2023.

SECTION 17. (1) Sections 1 to 14 of this 2022 Act and the amendments to ORS 459.995 by section 15 of this 2022 Act become operative on January 1, 2023.

(2) The Environmental Quality Commission and the Department of Environmental Quality may take any action before the operative date specified in subsection (1) of this section that is necessary for the commission and the department to exercise, on and after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the commission and the department by sections 1 to 14 of this 2022 Act and the amendments to ORS 459.995 by section 15 of this 2022 Act.

SECTION 18. (1) Initial plans for mattress stewardship programs under sections 4 and 8 of this 2022 Act must be submitted to the Director of the Department of Environmental Quality no later than October 1, 2023.

(2) Notwithstanding section 6 (4) of this 2022 Act, a stewardship organization shall implement a mattress stewardship program as described in an initial plan submitted pursuant to subsection (1) of this section no later than seven months after the date that the initial plan is approved by the department under section 6 of this 2022 Act.

CAPTIONS

SECTION 19. The unit captions used in this 2022 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2022 Act.

EFFECTIVE DATE

SECTION 20. This 2022 Act takes effect on the 91st day after the date on which the 2022 regular session of the Eighty-first Legislative Assembly adjourns sine die.

Passed by Senate February 25, 2022

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House March 3, 2022

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Dan Rayfield, Speaker of House

Received by Governor:

.....M.,....., 2022

Approved:

.....M.,....., 2022

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2022

.....
Shemia Fagan, Secretary of State