"Sec. 116. **[115A.143] MATTRESS RECYCLING.**

Subdivision 1. **Definitions.**

(a) For purposes of this section, the terms in this subdivision have the meanings given.

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

(c) “Commissioner” means the commissioner of the Minnesota Pollution Control Agency.

(d) “Consumer” means an owner of a mattress, including a person, business, corporation, limited partnership, nonprofit organization, or governmental entity, and including the ultimate purchaser, owner, or lessee of a mattress. “Consumer” does not include a government organization or other party that obtains one or more discarded mattresses in the course of collecting used mattresses for recycling for purposes of this chapter, or through the ordinary collection and handling of municipal solid waste.

(e) "Covered entity" means a commercial, institutional, governmental, or industrial generator of mattresses that were used and discarded in the state, such as a health care facility, educational facility, military base, or commercial or nonprofit lodging establishment. Covered entity does not include a renovator, refurbishuer or person that only transports a discarded mattress. Covered entities may engage in mattress collection or mattress drop-off activities for mattresses that will be managed in the mattress stewardship program.

(f) "Discarded mattress" means a mattress that a consumer discarded, intends to discard, or abandoned in the state.

(g) "Foundation" means any ticking-covered structure that is used to support a mattress and that is composed of one or more of a constructed frame, foam, or a box spring, whether stationary, adjustable, or foldable.

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

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

(j) "Mattress recycling council" or "council" means the nonprofit organization created by producers or created by any trade association that represents producers who account for a majority of mattress production in the United States to design, submit, and implement the mattress stewardship program. Retailers may participate in the council.

(k) "Mattress stewardship fee" means the amount added to the purchase price of a mattress sold to a consumer or to an ultimate end user in this state that is necessary to cover the cost of accepting, transporting, and processing discarded mattresses according to the mattress stewardship program established in this section.

(l) "Mattress stewardship program" or "program" means the statewide program and implemented according to the mattress stewardship plan.

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

(n) "Performance goal" means a metric proposed by the council to annually measure the performance of the mattress stewardship program, taking into consideration technical and economic feasibilities in achieving continuous, meaningful improvement in the rate of mattress recycling in the state and any other specified goal of the program.

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

(1) the owner of a trademark or brand under which a mattress is sold, offered for sale, or distributed in this state, whether or not the trademark or brand is registered in this state; and

(2) a person who imports a mattress into the state that is sold or offered for sale in this state and that is manufactured or renovated by a person who does not have a presence in the United States.

(p) "Qualified processor" means a recycling entity that recycles mattresses discarded in the state under a contract with the council that meets the requirements set forth in subd. 7.

(q) “Recyclable mattress” means a mattress that a consumer discarded, intends to discard, or abandoned in the state, but does not include a mattress that cannot be safely recycled because it is contaminated by putrescible solid waste or is substantially soiled, is infested with bedbugs, or poses a risk to worker health or equipment, which should be disposed of through the existing solid waste system.

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

(s) "Renovate" or "renovation" means altering a mattress for resale, including any one or a combination of replacing the ticking or filling, adding additional filling, or replacing components with new or recycled materials. Renovate or renovation does not include:

(1) stripping a mattress of its ticking or filling without adding new material;

(2) sanitizing or sterilizing a mattress without otherwise altering the mattress; or

(3) a renovator altering a mattress for a person who retains the altered mattress for personal use, in accordance with chapter 325F.

(t) "Renovator" means a person who renovates discarded mattresses to resell the mattresses to consumers.

(u) "Retailer" means a person who sells or offers to sell mattresses to a consumer or to an ultimate end user in this state.

(v) "Sale" means transfer of title of a mattress for consideration to a consumer or an ultimate end user in the state, including but not limited to by means of a sales outlet, catalog, website, or similar electronic means.

(w) "Sanitizing" means directly applying chemicals to a mattress to kill human disease-causing pathogens.

(x) "Sterilizing" means mitigating deleterious substances or organisms, including human disease-causing pathogens, fungi, and insects from a mattress or filling material using a chemical or heat process.

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

 (z) “Unrecyclable mattress” means a mattress that a consumer discarded, intends to discard, or abandoned in the state that is contaminated by putrescible solid waste or is substantially soiled, is infested with bedbugs, or poses a risk to worker health or equipment, which should be disposed of through the existing solid waste system.

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

Subd. 2. **Mattress recycling council; required plan.**

(a) Within 180 days after the effective date of this section, producers must establish a mattress recycling council in the state.

(b) Within the latter of 180 days after the effective date of this section or 30 days after becoming a producer thereafter, each producer or the producer's designee must join the mattress recycling council.

(c) Within 365 days after the effective date of this section, the council must submit a plan for approval by the commissioner to establish a statewide mattress stewardship program, as described in this subdivision.

(d) At least once every five years after the plan identified in subparagraph (c) is approved the mattress recycling council shall review the plan and determine whether amendments to the plan are necessary. If the council determines amendments to the plan are necessary, it shall amend the plan. If the council determines that no amendments to the plan are necessary, it shall send a letter to the commissioner explaining that the council has reviewed the plan and determined no revisions are needed. The commissioner may disapprove the council’s determination within 30 days of that determination if it concludes that the council cannot implement the objectives of this chapter without amending the plan.  If the commissioner disapproves the determination, the commissioner shall explain, in writing, why amendments to the plan are necessary to comply with this section, and the mattress recycling organization shall resubmit an amended plan. If the commissioner finds that the amended plan resubmitted by the organization does not comply with the requirements of subdivision 2(e), the mattress recycling organization shall not be deemed in compliance until the organization submits an amended plan that the commissioner finds complies with the requirements of subdivision 2(e).

(e) The mattress stewardship program plan submitted pursuant to this subdivision must, in an economically efficient and practical manner:

(1) provide for a statewide network of convenient, and accessible locations to receive discarded mattresses at no charge to any person in the state with a discarded mattress that was used and discarded in the state, including but not limited to participating covered entities that accumulate and segregate a minimum of 100 recyclable mattresses for collection at one time;

(2) may establish requirements for other minimum counts of accumulated mattresses suitable to the operational constraints of covered entities' collection sites, and shall provide for the transfer of collected recyclable mattresses from the premises of covered entities to qualified processors;

(3) provide for end of life management of discarded mattresses collected according to clauses (1) and (2) through negotiated agreements with public covered entities that accept discarded mattresses at no charge to the public that pay the covered entity a fee for its reasonable actual costs for the proper and cost effective accepting, storing, transporting and handling of discarded mattresses for recycling or disposal. The council and any covered entity are obligated to negotiate in good faith;

(4) provide for recycling of recyclable mattresses by a qualified processor;

(5) describe how the council will coordinate the program with existing consolidation, transportation, and recycling programs for discarded mattresses;

(6) provide suitable storage containers at or make other mutually agreeable storage and transport arrangements for covered entities for segregated, recyclable mattresses, at no cost to the covered entity, provided the covered entity can accumulate and store at least 50 recyclable mattress, makes space available for the purpose and imposes no fee for placement of the storage container on the covered entity premises;

(7) provide that the council will conduct research as needed related to improving discarded mattress collection, dismantling, and recycling operations, including pilot programs to test new processes, methods, or equipment on a local, regional, or otherwise limited basis, and

(8) include a mattress stewardship fee set in accordance with paragraph (f) that is sufficient to cover but not exceed the costs of operating and administering the program.

(9) identify each producer and retailer participating in the program as a member of the council participating in the program;

(10) describe the roles and responsibilities of producers and retailers participating in the program;

(11) describe the mattress stewardship fee for the program and a proposed budget;

(12) describe the mattress stewardship fee collection procedures and how producers and retailers are notified of the procedures;

(13) establish program performance goals for the first two years of the program and annual diversion targets and recycling rates of mattresses based on estimated or actual sales and estimated discarded mattresses;

(14) describe how the program will, to the extent economically efficient and practical, achieve continuous meaningful improvement in the mattress diversion targets, mattress collection rates, mattress recycling rates, mattress material recovery rates, and any other approved performance goals of the program;

(15) identify proposed consolidation and recycling facilities to be used by the program;

(16) describe the action for implementing and achieving convenient, statewide access to the program;

(17) detail how the program will promote recycling discarded mattresses consistent with the state's solid waste management hierarchy;

(18) describe how the council will coordinate the program with existing consolidation, transportation, and recycling programs for discarded mattresses;

(19) establish program performance goals for the material recovery rate from mattresses collected for recycling and utilize these criteria when evaluating vendor performance;

(20) describe how the program will set and implement convenience goals and a timeline for implementing and achieving convenient access to the program;

(21) identify program expenditure categories that will be reported each year in the annual report;

(22) describe how the council will notify the commissioner in a timely manner of events or circumstances that materially alter or disrupt program operations as approved in the stewardship plan; and

(23) include a description of public education regarding the program.

(f) The council must set the amount of the mattress stewardship fee that is added to the purchase price of a mattress at the point of sale. The council must establish and implement a mattress stewardship fee structure that covers but does not exceed the costs of developing the plan described in paragraph (b), operating and administering the program described in paragraph (a), and maintaining a financial reserve sufficient to operate the program over multiple years in a fiscally prudent and responsible manner. The council must set the mattress stewardship fee as a flat rate and not as a percentage of the purchase price. The council must maintain all records relating to the program for not less than three years.

(g) Under the program, recycling is preferred over any other disposal method for mattresses, to the extent that recycling is economically efficient and practical.

(h) The commissioner must approve the plan for establishing the mattress stewardship program or any amendment, if the plan or amendment meets the requirements of paragraphs (e) to (g). No later than 90days after the council submits the plan or amendment according to this section, the commissioner must make a determination whether to approve the plan or amendment. Before making the determination, the commissioner must post the plan on the agency's website and offer a 30 day public comment period on the plan. Before approving or disapproving the plan or amendment, the commissioner may solicit public comments on the plan or amendment in a manner determined by the commissioner. If the commissioner disapproves the plan or amendment because the plan or amendment does not meet the requirements of paragraphs (e) to (g), the commissioner must describe the reasons for the disapproval in a notice of determination that the commissioner provides to the council. The council must revise and resubmit the plan to the commissioner within 45 days, or prepare an amended plan within 180 days, after receiving notice of the commissioner's disapproval. Within 45 days after receiving the revised plan or amendment, the commissioner must review and approve or disapprove the plan and or amendment provide a notice of determination to the council. The council may resubmit a revised plan or amendment to the commissioner for approval no more than twice. If the council fails to submit a plan or amendment that is acceptable to the commissioner because it does not meet the requirements of paragraphs (e) to (g), the commissioner must modify a submitted plan or amendment to make it conform to the requirements of paragraphs (e) to (g) and approve it. Within 180 days after approval of a plan or amendment according to this paragraph, the council must implement the mattress stewardship program. Regardless of when the program begins, the program's fiscal year begins January 1.

(i) The council must submit any proposed substantial change to the program to the commissioner for review and approval, but without resubmitting the plan to the commissioner for approval. If the commissioner does not disapprove a proposed substantial change within 90 days of receiving notice of the proposed substantial change, the proposed substantial change is deemed approved. For purposes of this paragraph, "substantial change" means: (1) a change in the processing facilities to be used for a discarded mattress collected under the program; or (2) a material change to the system for collecting mattresses.

(j) The council must notify the commissioner of other material changes to the program on an ongoing basis, without submitting the change to the commissioner for approval. Material changes include but are not limited to a change in the composition, officers, or contact information of the council.

(k) Within 90 days after the end of the program's second fiscal year, and every five years thereafter, the council must submit updated program performance and convenience goals and associated implementation timelines to the commissioner that are based on the experience of the program during the first two years of the program, and every subsequent five year term for review and approval according to the procedure in paragraph (h).

(l) The council must notify the commissioner in a timely manner of any temporary disruptions in the program as approved, and the council’s planned response to the disruption.

Subd. 3. Mattress Stewardship Fee Review, prudent reserves

(a) Within 90 days after the end of the program's second fiscal year and every two years thereafter, the council must propose a mattress stewardship fee for all mattresses sold in this state.

(b) The council may propose a change to the mattress stewardship fee more frequently than once every two years if the council determines the change is needed to avoid funding shortfalls or excesses for the mattress stewardship program.

(c) Any mattress stewardship fee proposed after the end of the program's second fiscal year must be reviewed by an independent auditor to ensure that the fee does not exceed the cost to fund the mattress stewardship program described in subd. 2 (f) and to maintain financial reserves sufficient to operate the program over multiple years in a fiscally prudent and responsible manner. After the first three fiscal years of program implementation, the mattress recycling organization shall not maintain total reserves exceeding 75 percent of its annual operating expenses, consistent with the requirements of the Financial Accounting Standards Board’s Accounting Standards Update 2016-14, Not-for-Profit Entities (Topic 958), and any future updates to that standard. The commissioner may authorize the total reserves to be increased up to 100 percent of the organization’s annual operating expenses if the commissioner determines the increase is necessary to implement the requirements of this section.

(d) Within 60 days after the council proposes a mattress stewardship fee, the auditor must render an opinion to the commissioner as to whether the proposed mattress stewardship fee is reasonable to achieve the goals set forth in this section. If the auditor concludes that the mattress stewardship fee is reasonable, then the proposed mattress stewardship fee goes into effect within 180 days. If the auditor concludes that the mattress stewardship fee is not reasonable, the auditor must provide the council with written notice explaining the auditor's opinion. Within 60 days after the council receives the auditor's opinion, the council may either propose a new mattress stewardship fee or provide written comments on the auditor's opinion. If the auditor concludes that the mattress stewardship fee is not reasonable, the commissioner must decide, based on the auditor's opinion and any comments provided by the council, whether to approve the proposed mattress stewardship fee**.**

(e) The auditor, selected by the council, must be approved by the commissioner. The cost of any work performed by the auditor under this paragraph must be paid by the mattress stewardship fee.

(f) Two years after the program is implemented and every five years thereafter the council must cause a program audit to be conducted by an independent auditor. The audit must review the accuracy of the council's data concerning the program and provide any other information requested by the commissioner, consistent with the requirements of this section, provided the request does not require the disclosure of proprietary information or trade or business secrets. The council must pay for the audit. The council must maintain all records relating to the program for at least three years.

Subd. 4. Annual Report

(a) Not later than July 1 each year, the council must submit an annual report to the commissioner for the most recently completed calendar year. The council must post the annual report on the council’s website. The commissioner must post a link to the annual report on the agency's website. The report must include:

(1) the tonnage and estimated number of mattresses collected under the program from participating covered entities;

(2) the tonnage and estimated number of mattresses diverted for recycling;

(3) the tonnage and estimated number of discarded mattresses for the reporting period as compiled by the participating covered entities and reported to the council;

(4) the weight of mattress materials recycled, as indicated by the weight of each of the commodities sold to secondary markets and reported by qualified processors to the council;

(5) the weight of mattress materials sent for disposal and reported by qualified processors to the council;

(6) a summary of the public education that supports the program and an evaluation of its effectiveness;

(7) an evaluation of the effectiveness of methods and processes used to achieve statewide convenience and accessibility performance goals of the program;

(8) recommendations for any changes to the program;

(9) total annual mattress sales and mattress stewardship fee revenues;

(10) an assessment of program performance for the reporting period compared to the program performance goals in the approved plan;

(11) an assessment of the effectiveness of different types of mattress collection and consolidation programs used throughout the state;

(12) annual program expenditures by program expenditure category; and

(13) audited financial statements required by subd. 3(f).

(14) other information consistent with this section and economically efficient and practical to provide, requested by the commissioner.

Subd. 5. Charging mattress stewardship fee; retailer and producer participation.

Upon implementation of the mattress stewardship program, each manufacturer, renovator, retailer, or distributor that sells a mattress to a consumer or to an ultimate end user in the state must add the mattress stewardship fee to the purchase price for the mattress and must remit the mattress stewardship fee collected to the council. In each transaction, the mattress stewardship fee must appear on the invoice and may be accompanied by a brief description of the mattress stewardship fee. The council must determine the rules and procedures necessary to implement collection of the mattress stewardship fee in a fair, efficient, and lawful manner. Any producer or retailer who fails to participate in the program must not sell mattresses in this state.

Subd. 6. Receipt of discarded mattresses.

Upon implementation of the mattress stewardship program and when the mattress stewardship fee goes into effect, a covered entity that participates in the programmust notcharge for the receipt of discarded mattresses that are discarded in this state, except that a person or entity may charge a fee for providing a pickup service, including residential or commercial pickup services. A covered entity may restrict the acceptance of mattresses by number or source.

Subd. 7. Qualified processor**.**

(a) The council shall collect from each qualified recycler the name, address, telephone number, and location of all mattress recycling facilities under the direct control of the processor that may receive mattresses.

(b) The council’s contract with each of its qualified processors must require that the processor:

(1) comply with the requirements of this section;

(2) comply with all applicable health, environmental, safety, and financial responsibility regulations;

(3) be licensed by all applicable governmental authorities; and

(4) possess commercial general liability insurance of not less than

 $1,000,000 per occurrence.

(c) By March 1 of each year, each qualified processor shall submit an annual report to the council in a format prescribed by the council, indicating the name and address of the recycling facility, the fiscal year covered by the report, the quantity and weight of the

Mattresses processed at the facility, and the amount by weight of each category of material removed from discarded mattresses shipped to brokers, processors, manufacturers, solid waste facilities or other destinations.

Subd. 8. Consultation required**.**

The mattress recycling council must consult with stakeholders which may include retailers, collectors, recyclers, local governments, and consumers during the development of the plan and any amendment of the plan.

Subd. 9. Plan availability.

All draft and approved stewardship plans shall be placed on the council and agency's website**s** for at least 30 days and made available at the agency's headquarters for public review and comment.

Subd. 10. Conduct authorized.

A producer or stewardship organization that organizes collection, transport, and processing of mattresses; and the setting, collecting and disbursement of fees, under this section is immune from liability for the conduct under state laws relating to antitrust, restraint of trade, unfair trade practices, and other regulation trade or commerce only to the extent that the conduct is necessary to plan and implement the mattress recycling council's organized collection or recycling system.

Subd. 11. Data classification.

Data submitted to the council, ~~or agency~~ under this section are trade secret, private or nonpublic data under ~~section~~ chapter13~~.37~~. Trade secret, sales information, as defined under section 13.37, and contracts submitted to the agency under this section are private or nonpublic data under section 13.37.

Subd. 12. Administrative fee.

(a) Prior to January 15, 2023 and before January 15annually thereafter, the agency shall

identify the costs it incurs under this section. On or before July 1,2023, and annually thereafter, the council must pay the agency from the stewardship fee an administrative fee to pay the agency’s actual costs that are directly related to implementing and enforcing the mattress stewardship program, including reimbursement for costs incurred between the effective date of this section and when the fee is collected. The commissioner must receive legislative approval for any fee that exceeds the lesser of two percent of the aggregate stewardship fee added to the cost of all mattresses sold in the state for the preceding calendar year, or $100,000.

 (b) Administrative fees shall be deposited in the state treasury and credited to a product stewardship account in the special revenue fund. The amount collected under this section is annually appropriated to the agency to implement and enforce this section. All administrative fees shall be deposited in the state treasury and credited to a product stewardship account in the

special revenue fund. The amount collected under this section is annually appropriated to the agency to implement and enforcethis section.

Subd. 13. Regional collaboration.

In the event that another state implements a mattress recycling program, the council may collaborate with such state to conserve efforts and resources used in carrying out the mattress stewardship program, provided such collaboration is consistent with the requirements of this section.

Subd. 14. Local government participation.

(a) Cities, counties, public agencies or other political subdivisions may choose to participate in the stewardship program.

(b) Cities, counties, public agencies or other political subdivisions are encouraged to work with producers and the council to assist in meeting program goals and obligations by providing education, outreach or using other strategies.

Subd. 15. Producer and retailer participation.

A producer must join the council as required in Subd.2 (b). A retailer or other person selling a mattress to the final consumer in the state must remit the mattress stewardship fee to the council for mattresses sold to consumers in the state. A producer may not sell or distribute for sale or use a mattress in the state if it has not joined the council. A retailer may not sell or distribute for use mattresses of a producer that has not joined the council, except for inventory acquired before the start date of the program or acquired during a time when the producer was participating in the council.

Subd. 16. Prohibited uses.

Stewardship assessment funds must not be used for any penalties assessed under this section.

Subd. 17. Duty to provide information.

Any producer, retailer, participating covered entity, qualified processor, must furnish to the agency any information which that person may have or may reasonably obtain that the agency requests for the sole purpose of determining compliance under this section.

Subd. 18. Effective Date. This section is effective January 1, 2023.