
OLR Bill Analysis

sHB 5139

AN ACT CONCERNING EXTENDED PRODUCER RESPONSIBILITY FOR TIRES.

SUMMARY

This bill requires the establishment of a statewide stewardship program to manage certain discarded tires that, among other things, must minimize public sector involvement. It prohibits tire producers who fail to participate in the program from selling tires or offering them for sale in Connecticut.

The bill requires tire producers, or their designees, to join a nonprofit stewardship organization that they, or a trade association representing them, establish. The stewardship organization must develop a plan to implement the program which must, in turn, be submitted to the Department of Energy and Environmental Protection (DEEP) for approval.

Among other things, the plan must detail how the program will be financed, which may be through a fee structure. The bill also authorizes the DEEP commissioner to assess a reasonable fee, of up to 10% of the total program costs, on the stewardship organization for program administration.

The bill (1) allows the DEEP commissioner to civilly enforce the program's requirements, (2) establishes auditing and reporting requirements, and (3) provides immunity to producers and organizations from claims of antitrust or unfair trade practice violations under certain circumstances. It also allows an organization to collaborate with another state with a tire stewardship or recycling program.

EFFECTIVE DATE: October 1, 2022

TIRE PRODUCERS

The bill applies to “producers” (manufacturers) of tires sold, offered for sale, or distributed in Connecticut under the producer’s own name or brand. It includes (1) the owner of a trademark or brand under which a tire is sold, offered for sale, or distributed in the state and (2) any person who imports a tire into the United States that is sold or offered for sale in Connecticut and manufactured by a person without a U.S. presence. A “brand” is a name, symbol, word, or mark that attributes a tire to its producer. The bill exempts any tire manufacturer with less than 0.1% of the nationally recognized market share.

Under the bill, a “discarded tire” is a tire a consumer discarded, abandoned, or intended to discard or abandon. Tires covered by the bill include products made primarily of rubber that are mounted on wheels of passenger and commercial motorized vehicles, whether on- or off-road, including passenger vehicles; motorcycles; trucks; buses; mobile homes; trailers; noncommercial aircraft; and earthmoving, road building, mining, logging, agricultural, industrial, and other vehicles providing mobility. The bill excludes tires for toys, bicycles, commercial aircrafts, or personal mobility devices.

A “sale” is the transfer of title of a tire for consideration, including through a sales outlet, catalog, or website or similar electronic means.

PROGRAM PURPOSES AND ESTABLISHMENT

By July 1, 2023, the bill requires producers, or their designees, to join the tire stewardship organization, which is a nonprofit organization to design, submit, and implement the tire stewardship program. The stewardship organization must be created by producers or any trade association that represents the producers who account for the majority of U.S. tire production. The bill allows retailers to participate in the stewardship organization.

Under the bill, the tire stewardship program must, to the extent that it is technologically feasible and economically practical, minimize public sector involvement in managing discarded tires and provide for the following:

1. free, convenient, and accessible statewide opportunities for receiving discarded tires from anyone in the state with a tire that was discarded in Connecticut, including covered entities (see below) with at least six cubic yards of accumulated and segregated tires at one time;
2. free collection of discarded tires from municipal transfer stations that accumulate and segregate fewer than 100 tires and need collection because of space or permit requirements;
3. producer-financed end-of-life management for collected discarded tires; and
4. suitable storage containers at, or some other mutually agreed-to storage and transport arrangement for, permitted municipal transfer stations for segregated, discarded tires, at no cost to the municipality.

“Covered entities” include permitted transfer stations, retailers, car dealerships, automotive garages, and public or private fleet maintenance garages.

PLAN DEVELOPMENT AND SUBMISSION

By the same date (July 1, 2023), the tire stewardship organization must submit a plan to establish a statewide tire stewardship program to the DEEP commissioner for approval.

The plan must:

1. identify each participating producer,
2. describe program financing,
3. establish performance goals for the program’s first two years,
4. identify proposed program facilities,
5. detail how the program (a) follows the state’s solid waste hierarchy (see BACKGROUND) and (b) will promote recycling

discarded tires, and

6. describe the program's public education program.

Under the bill, the stewardship organization must establish and implement a system to finance the program that covers, but does not exceed, the costs to (1) develop the plan, (2) operate and administer the program, and (3) maintain a financial reserve sufficient to operate the program for six months. Its proposed annual performance metrics must consider technical and economic feasibilities to achieve continuous, meaningful improvement in state's tire recycling rate and other specified program goals.

PLAN APPROVAL AND IMPLEMENTATION

The bill requires the DEEP commissioner to determine whether to approve the plan for the tire stewardship program within 90 days after its submission, but after she posts the plan on DEEP's website and solicits public comments. The bill specifies that the solicitation is not conducted in accordance with the Uniform Administrative Procedure Act.

She must approve a plan if it meets the bill's program, plan, and financing requirements. If the commissioner disapproves the plan, she must provide the stewardship organization with a notice of determination describing her reasons. The organization must revise and resubmit its plan within 45 days after receiving the disapproval notice. The commissioner must review and either approve or disapprove a revised plan within 45 days after receiving it and provide a notice of determination to the organization. The bill restricts resubmitting a revised plan for approval to no more than two occasions. If the organization fails to provide an acceptable plan, the commissioner must modify its submitted plan to conform with the requirements.

The bill requires the stewardship organization to implement the tire stewardship program within (1) 120 days after plan approval or (2) 180 days after a DEEP-modified plan is approved.

CHANGES TO A PLAN

The bill requires the stewardship organization to submit substantial proposed plan changes to the DEEP commissioner for approval. Under the bill, a “substantial change” is a (1) change in the processing facilities used for collected discarded tires or (2) material change to the system for collecting them. The bill provides no deadline by which the commissioner must approve a substantial change by the stewardship organization.

The bill also requires an organization to notify the commissioner of other material program changes on an ongoing basis and without resubmitting the plan for approval. These changes include such things as changing the organization’s composition, officers, or contact information.

The bill requires the organization to submit updated performance goals to the commissioner by July 1, 2025. The updated goals must be based on the program’s experience during its first two years, but it is unclear that the program will have been implemented for two years by this date.

TIRE COLLECTION FEES

Once the program is implemented, the bill prohibits participating covered entities from charging for the receipt of tires discarded in Connecticut. However, it allows them to refuse tires by number, source, or condition.

AUDIT REQUIREMENTS

Program Audits

Two years after program implementation, and then every three years, an organization must pay for a program audit by a commissioner-selected auditor. The bill also allows the commissioner to request an audit no more than once per year. The audit must (1) review the accuracy of the organization’s program data and (2) provide any other program-related information the commissioner requests, but not any proprietary information or trade or business secrets.

The bill requires an organization to maintain all program records for

at least three years.

Audited Financial Statements

Existing law requires any product stewardship organization operating in the state to, annually by May 1, submit to DEEP certified audited financial statements and the name of any contractor or organization that has a contract with it valued at \$2,000 or more. DEEP must post and maintain the information on its website (CGS § 22a-905g). This requirement applies to the tire stewardship organization.

REPORTING REQUIREMENTS

Stewardship Organization

Annually by October 15, the bill requires a stewardship organization to submit a report to the DEEP commissioner on a form she prescribes. The report must then be posted on DEEP's website. Under the bill, the report must include the following information:

1. tonnage of tires collected from municipal transfer stations, retailers, and other covered entities;
2. tonnage of tires diverted for recycling;
3. a summary of the program's public education efforts;
4. an evaluation of the effectiveness of methods and processes used to achieve program performance goals; and
5. recommendations for any program changes.

DEEP

Within three years after the plan's approval, the DEEP commissioner must submit a report to the Environment Committee that evaluates the program. The report must also establish goals for (1) the amount of discarded tires managed under the program and (2) diverting tires for recycling, considering technical and economic feasibilities. The bill specifies that recycling does not include incinerating tires for energy recovery.

CIVIL PENALTIES

The bill authorizes the DEEP commissioner to enforce the program's requirements under her existing authority.

It allows the commissioner to ask the attorney general to bring an action for injunctive relief in New Britain Superior Court if she believes that a person has engaged in, or is about to engage in, any act, practice, or omission that violates the program's requirements. It permits the court to issue a permanent or temporary injunction, restraining order, or other appropriate order, including remedial measures and directing compliance. The bill requires that these actions by the attorney general take precedence over other actions in the order of trial.

LIABILITY PROTECTION

Under the bill, to the extent a producer or an organization is exercising authority according to the bill's provisions, it is immune from liability for any antitrust or unfair trade practice claim based on a violation of antitrust law.

INTERSTATE COLLABORATION

The bill allows a stewardship organization to collaborate with another state that has a similar tire stewardship or recycling program to conserve efforts and resources. However, the collaboration must be consistent with the bill's requirements.

BACKGROUND

Solid Waste Hierarchy

Connecticut's Comprehensive Materials Management Strategy (i.e., the revised statewide Solid Waste Management Plan) has a hierarchy as a guide for solid waste management efforts. The hierarchy emphasizes source reduction, recycling, composting, and energy recovery. It lists landfilling and incineration as last resorts for solid waste disposal.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 29 Nay 2 (03/04/2022)