

ASSEMBLY BILL

No. 2398

Introduced by Assembly Member John A. Perez

February 19, 2010

An act to add Chapter 20 (commencing with Section 42970) to Part 3 of Division 30 of the Public Resources Code, relating to recycling.

LEGISLATIVE COUNSEL'S DIGEST

AB 2398, as introduced, John A. Perez. Product stewardship: carpet. The California Integrated Waste Management Act of 1989, administered by the Department of Resources Recycling and Recovery, is required to reduce, recycle, and reuse solid waste generated in the state to the maximum extent feasible in an efficient cost-effective manner to conserve water, energy, and other natural resources.

This bill would require the department, by January 1, 2012, to establish a baseline collection rate for the amount of carpet that is discarded and subsequently collected. The bill would provide a procedure for determining the collection rate for purposes of the bill, commencing January 1, 2013.

The bill would require, by September 30, 2011, a producer or the product stewardship organization created by one or more producers of a carpet to submit a carpet stewardship plan to the department, which would be required to include specified elements, including performance goals as to the collection rate for a compact. By January 1, 2012, the department would be required to review and either approve or disapprove carpet stewardship plans submitted to the department.

The bill would prohibit a producer or retailer, on and after January 1, 2012, from selling a carpet unless the producer or carpet stewardship organization of the carpet has submitted a plan to the department that

is approved by the department. The act would require a producer of carpet to collect the carpet pursuant to the carpet stewardship plan and to meet the performance goals included in the carpet stewardship plan.

Each producer or carpet stewardship organization implementing a carpet stewardship plan would be required to prepare and submit to the department an annual report describing the activities carried out pursuant to the carpet stewardship plan and the department would be required to adopt regulations, by January 1, 2012, specifying the information required to be included in the annual carpet stewardship plan report.

A producer or carpet stewardship organization submitting a carpet stewardship plan would be required to pay the department an unspecified fee when submitting the plan for review and approval and to pay an annual administrative fee, determined as an unspecified percentage of the costs of implementing the plan. The bill would provide for the imposition of administrative civil penalties upon a producer who does not comply with the bill's requirements or a producer or retailer selling carpet in violation of the bill. The bill would create the Carpet Stewardship Account in the existing Integrated Waste Management Fund and would require that the administrative fees be deposited into that account and that the penalties be deposited into the Carpet Stewardship Penalty Subaccount that the bill would create in that account. The bill would authorize the fees and penalties to be expended, upon appropriation by the Legislature, to cover the department's program implementation costs and as incentives to enhance recyclability and redesign efforts and to reduce environmental and safety impacts of carpet.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Recycling carpets results in greater green house gas (GHG)
- 4 emission reductions than most other products.
- 5 (b) Carpets accounted for 3.2 percent of waste by volume
- 6 disposed of in California in 2008.
- 7 (c) Despite nationwide and California memoranda of
- 8 understanding to promote carpet recycling, the carpet recycling
- 9 rate has dropped from 4.9 percent in 2007 to 4.3 percent in 2008.

1 (d) The California carpet industry memorandum of
2 understanding targets a recycling rate of between 20 and 25 percent
3 by 2012.

4 (e) Because other types of recycling programs have proven to
5 have limited success, state and regional governments in Europe
6 and Canada have adopted producer responsibility programs to
7 redirect the responsibility for the end-of-life management of
8 discarded hazardous and hard to manage products from local
9 governments and retailers primarily to producers.

10 (f) The former California Integrated Waste Management Board
11 adopted an overall Framework for an Extended Producer
12 Responsibility (EPR) guidance document as a policy priority in
13 January 2008.

14 (g) The program established by this act is intended to reduce
15 costs to local government, to harmonize the state's producer
16 responsibility obligations with other national and international
17 programs, and to enhance the protection of public health and the
18 environment through safer product design, use, and end-of-life
19 management.

20 SEC. 2. Chapter 20 (commencing with Section 42970) is added
21 to Part 3 of Division 30 of the Public Resources Code, to read:

22
23 CHAPTER 20. PRODUCT STEWARDSHIP FOR CARPETS
24

25 42970. For purposes of this chapter, and unless the context
26 otherwise requires, the definitions in this chapter govern the
27 construction of this chapter:

28 (a) "Brand" means a name, symbol, word, or mark that identifies
29 the carpet, rather than its components, and attributes the carpet to
30 the owner or licensee of the brand as the producer.

31 (b) "Carpet" means ____.

32 (c) "Collection rate" means a quantitative measure that
33 establishes the amount of carpet required to be collected by the
34 carpet stewardship system for that carpet by an established date.
35 The collection rate is included as a component of the performance
36 goals for a carpet.

37 (d) "Department" means the Department of Resources Recycling
38 and Recovery.

1 (e) “Performance goal” means the collection rate of carpets and
2 may include, but is not limited to, the reuse and recycling rates
3 established by the carpet stewardship plan for that carpet.

4 (f) “Producer” shall be determined, with regard to a carpet that
5 is sold, offered for sale, or distributed in the state, as meaning one
6 of the following:

7 (1) The person who manufactures the carpet and who sells,
8 offers for sale, or distributes that carpet in the state under that
9 person’s own name or brand.

10 (2) If there is no person who sells, offers for sale, or distributes
11 the carpet in the state under the person’s own name or brand, the
12 producer of the carpet is the owner or licensee of a trademark or
13 brand under which the carpet is sold or distributed in the state,
14 whether or not the trademark is registered.

15 (3) If there is no person who is a producer of the carpet for
16 purpose of paragraphs (1) and (2), the producer of that carpet is
17 the person who imports the carpet into the state for sale or
18 distribution.

19 (g) “Product goal” means those qualitative or quantitative goals
20 determined by the producer to measure improvements that reduce
21 the life cycle impacts of a carpet.

22 (h) “Product stewardship” means requiring the producer of a
23 carpet, and all other entities involved in the distribution chain of
24 a carpet, to share in the responsibility of reducing the life cycle
25 impact of the carpet and its packaging, including requiring the
26 producer who makes design and marketing decisions for the carpet
27 to bear the primary responsibility for this reduction.

28 (i) “Product stewardship organization” means an organization
29 appointed by one or more producers to act as an agent on behalf
30 of the producer to design, submit, and administer a carpet
31 stewardship plan pursuant to this chapter

32 (j) “Product stewardship plan” or “plan” means a plan written
33 by an individual producer or a carpet stewardship organization,
34 on behalf of one or more producers, that includes all of the
35 information required by Section 42973.

36 (k) “Recycling rate” means a quantitative measure that
37 establishes the amount of a collected carpet that is recycled as
38 compared to the total amount of the carpet that is collected,
39 including the amount of the carpet that is discarded for reuse,
40 energy recovery, or safe disposal.

1 (l) “Reporting period” means the period commencing January
2 1 and ending on December 31 of the same calendar year.

3 (m) “Retailer” means a person that offers new carpet in a retail
4 sale, as defined in Section 6007 of the Revenue and Taxation Code,
5 including a retail sale at retail through any means, including remote
6 offerings such as sales outlets, catalogs, or an Internet Web site.

7 (n) “Reuse rate” means a quantitative measure that establishes
8 the amount of a collected carpet that is reused as compared to the
9 total amount of the covered carpet that is collected, including the
10 amount of the carpet that is discarded by recycling, energy
11 recovery, or safe disposal.

12 (o) “Sell” or “sales” means any transfer of title of a carpet for
13 consideration, including a remote sale conducted through a sale
14 outlet, catalog, or Internet Web site or similar electronic means,
15 but does not include a lease.

16 42971. On or before January 1, 2012, the department shall
17 establish a baseline collection rate for the amount of carpets that
18 are discarded and subsequently collected, based on existing
19 collection data.

20 42972. (a) The collection rate for a carpet shall be determined
21 in the following manner:

22 (1) For the calendar year commencing January 1, 2013, the
23 collection rate shall be 5 percent more than the baseline collection
24 rate determined pursuant to Section 42971.

25 (2) On and after January 1, 2014, the collection rate for each
26 carpet shall increase by no less than 5 percent annually until a 95
27 percent collection rate is reached.

28 (b) A producer may petition the department for an adjustment
29 to the collection rate. The department may grant an adjustment to
30 the collection rate only if the department determines there are
31 documented exigent circumstances that are beyond the control of
32 the producer or carpet stewardship organization.

33 42973. (a) On or before September 30, 2011, a producer or
34 the carpet stewardship organization of a carpet shall submit a carpet
35 stewardship plan to the department. A carpet stewardship
36 organization created pursuant to this section shall be open for
37 participation by all producers of carpet.

38 (b) A producer, group of producers, or carpet stewardship
39 organization shall consult with stakeholders during the
40 development of the carpet stewardship plan, including soliciting

1 stakeholder comments and responding to stakeholder comments
2 prior to submitting the carpet stewardship plan.

3 (c) Each carpet stewardship plan for an identified carpet shall
4 address the environmental impacts of a carpet over the entire life
5 cycle of that carpet, including carpet design, manufacture, and
6 distribution, and the collection, transportation, reuse, recycling,
7 and final disposition of discarded carpet, in accordance with this
8 chapter. The plan shall include, at a minimum, all of the following
9 elements:

10 (1) Contact information for all participating producers.

11 (2) A description of the brands of carpet covered by the plan.

12 (3) Performance goals, including a detailed description of how
13 the performance goals will be achieved and how results will be
14 measured and including both of the following:

15 (A) The collection rate shall be included as a performance goal
16 for a carpet.

17 (B) The reuse rate and recycling rate for that carpet shall be
18 included in the performance goal.

19 (4) An overview of the roles and responsibilities of key players
20 along the distribution chain for that carpet.

21 (5) Financing methods for the carpet stewardship plan.

22 (6) Strategies for managing and reducing the life cycle impacts
23 of the carpet, steps that will be taken to ensure environmentally
24 sound management, and how impacts will be tracked over time to
25 show continual improvement.

26 (7) Education and outreach activities.

27 (8) A description of the consultation process used to consult
28 with affected stakeholders regarding the carpet stewardship plan.

29 (9) A description of product goals, including, but is not limited
30 to, carpet designing and materials content, manufacturing,
31 packaging, distribution, and end-of-life management goals. The
32 product goals shall address the use of virgin material in the
33 manufacture of the carpet, the impact upon, or use of, water or
34 energy by the carpet, the use of, or generation of hazardous
35 substances, by the carpet, the carbon footprint of the carpet, the
36 carpet's longevity, the recycled content of the carpet, and
37 recyclability, where applicable.

38 (10) Procedures for notifying all retailers engaged in the sale
39 of that carpet.

1 42974. (a) On or before January 1, 2012, the department shall
2 review any plan submitted to the department and either approve
3 or disapprove the carpet stewardship plan submitted to the
4 department. If the department does not approve the plan, the
5 department shall notify the producer or organization that submitted
6 the plan and the producer or organization shall revise and resubmit
7 the disapproved carpet stewardship plan within 30 days after
8 receiving the notification.

9 (b) All carpet stewardship plans submitted to the department
10 shall be available to the public on the department's Internet Web
11 site.

12 (c) A producer shall notify the department 30 days before
13 instituting a significant or material change to a carpet stewardship
14 plan.

15 (d) The carpet stewardship plan shall be implemented upon the
16 approval of the department by the producer or the carpet
17 stewardship organization that submitted the plan.

18 42975. On and after January 1, 2012, a producer or retailer
19 shall not offer a carpet for sale in this state or offer a carpet for
20 promotional purposes in this state unless the producer or carpet
21 stewardship organization of the carpet has submitted a carpet
22 stewardship plan to the department pursuant to Section 42973 and
23 the carpet stewardship plan is approved by the department pursuant
24 to Section 42974 and being implemented pursuant to Section
25 42976.

26 42976. A producer of a carpet shall do all of the following
27 when implementing this chapter, including when implementing
28 an approved carpet stewardship plan:

29 (a) Collect the individual carpets to be reused or recycled
30 pursuant to the carpet stewardship plan for that carpet submitted
31 by the producer or carpet organization pursuant to Section 42973
32 and approved by the department pursuant to Section 42974.

33 (b) Meet the performance goals included in the carpet
34 stewardship plan, including achieving the collection rate established
35 pursuant to Section 42973.

36 (c) Provide collection services, in accordance with Section
37 42977, for the carpet that does not charge a fee at the time when
38 the carpet is collected for either recycling or disposal.

39 (d) Pay all administrative and operational costs associated with
40 the carpet stewardship plan, including the costs of collection,

1 transportation, and recycling or disposal, or both, of the carpet,
2 including the amount determined pursuant to Section 42979.

3 (e) Submit the annual report required by Section 42978.

4 42977. A carpet shall be handled and recycled, or, if not
5 feasible to be recycled, disposed of, in accordance with all state
6 and federal laws and regulations and local ordinances and
7 regulations, including, but not limited to, any law, regulation, or
8 ordinance that regulates hazardous waste.

9 42978. (a) On or before January 1, 2012, the department shall
10 adopt regulations specifying the information required to be included
11 in annual carpet stewardship plan reports. Notwithstanding
12 subdivision (b), the department may include, in those regulations,
13 alternative reporting requirements for purposes of those annual
14 reports.

15 (b) Beginning one year after a carpet stewardship plan is
16 approved or no later than January 1, 2013, whichever date is earlier,
17 and every subsequent year thereafter, each producer or stewardship
18 organization implementing a carpet stewardship plan shall prepare
19 and submit to the department an annual report describing the
20 activities carried out pursuant to the carpet stewardship plan during
21 the previous reporting period. The report, unless required otherwise
22 by the department pursuant to the regulations adopted pursuant to
23 subdivision (a), shall include, but is not limited to, all of the
24 following:

25 (1) Whether the producer or carpet stewardship organization,
26 in implementing the plan, attained the performance goals for the
27 carpet, and if the performance goals were not met, what actions
28 the producer or carpet stewardship organization will take during
29 the next reporting period to attain those performance goals.

30 (2) Whether the producer or carpet stewardship organization,
31 in implementing the plan, attained the carpet goals for the carpet,
32 and if the carpet goals were not met, what actions the producer or
33 stewardship organization will take during the next reporting period
34 to achieve those carpet goals.

35 (3) A description of the outreach and education activities
36 undertaken during the reporting period to inform consumers and
37 other stakeholders of the collection opportunities and safe carpet
38 handling described in the carpet stewardship plan.

1 (4) A description of those areas in the state that have been served
2 by the carpet stewardship plan and any barriers to, or opportunities
3 for, increased coverage in the future.

4 (5) A description of the actions undertaken to manage and reduce
5 the life cycle impacts of the carpet.

6 (6) The total cost to implement the carpet stewardship plan and
7 a description of any economic or job impacts to stakeholders.

8 (c) The department shall review a report submitted pursuant to
9 this section and shall approve the report if the department
10 determines the report contains the information required by this
11 section.

12 (d) The department shall make all reports submitted to the
13 department pursuant to this section available to the public on the
14 department's Internet Web site.

15 42979. (a) The producer or carpet stewardship organization
16 submitting a carpet stewardship plan shall pay the department an
17 administrative fee in the amount of ____ dollars (\$____) when the
18 plan is submitted for review and approval and thereafter pay an
19 annual administrative fee of ____ percent of the carpet stewardship
20 program costs as reported under paragraph (6) of subdivision (b)
21 of Section 42978.

22 (b) The total amount of annual fees collected pursuant to this
23 section shall not exceed the amount necessary to recover costs
24 incurred by the department in connection with the administration
25 and enforcement of the requirements of this chapter.

26 42980. (a) The Carpet Stewardship Account and the Carpet
27 Stewardship Penalty Subaccount are hereby established in the
28 Integrated Waste Management Fund.

29 (b) All fees collected pursuant to this chapter shall be deposited
30 in the Carpet Stewardship Account and may be expended by the
31 department, upon appropriation by the Legislature, to cover the
32 department's costs to implement this chapter.

33 (c) All penalties collected pursuant to this chapter shall be
34 deposited in the Carpet Stewardship Penalty Subaccount and may
35 be expended by the department, upon appropriation by the
36 Legislature, to cover the department's costs to implement this
37 article.

38 (d) All funds collected may be expended as incentives to
39 enhance reuse, recyclability, and redesign efforts and to reduce
40 environmental and safety impacts of carpet.

1 42981. (a) If, after holding a public hearing, the department
2 finds that a producer has failed to make a good faith effort to
3 comply with this chapter, including, but not limited to, failing to
4 submit a plan pursuant to Section 42973, the department shall issue
5 a compliance order with a schedule for achieving compliance.

6 (b) If, after issuing an order and schedule for compliance
7 pursuant to subdivision (c), the department finds that the producer
8 has failed to make a good faith effort to comply with this chapter,
9 the department may impose an administrative civil penalty of ten
10 thousand dollars (\$10,000) per day until the producer achieves
11 compliance.

12 (c) For purposes of this section, “good faith effort” means all
13 reasonable and feasible efforts by a producer towards implementing
14 the requirements of this chapter, including, but not limited to,
15 meeting the performance goals specified in the plan.

16 42982. (a) In addition to the penalty specified in Section
17 42981, the department may impose an administrative civil penalty
18 of ten thousand dollars (\$10,000) per day against a producer or
19 retailer who violates Section 42975.

20 (b) Prior to enforcing a penalty pursuant to this section, the
21 department shall issue a compliance order to the producer or retailer
22 selling the carpet allowing 30 days from the date of the compliance
23 order to cease sales of the carpet.

24 42983. (a) The department, or its designee, may inspect, audit,
25 or require and review third-party audits of producers, carpet
26 stewardship organizations, and service providers, including
27 collectors and recyclers, that are utilized to fulfill the requirements
28 of a carpet stewardship plan.

29 (b) For purposes of this section, a “service provider” means a
30 person who is authorized to perform an action to implement the
31 carpet stewardship plan with regard to the collection, recycling,
32 reuse, or disposal of a carpet, but does not include the consumer
33 of the carpet.

34 42984. The department shall adopt regulations for the
35 imposition of administrative civil penalties pursuant to this chapter.

36 42985. This article does not limit, supersede, duplicate, or
37 otherwise conflict with the authority of the Department of Toxic
38 Substances Control under Section 25257.1 of the Health and Safety
39 Code to fully implement Article 14 (commencing with Section
40 25251) of Chapter 6.5 of Division 20 of the Health and Safety

- 1 Code, including the authority of the department to include a carpet
- 2 in its product registry.

O