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AMENDED IN ASSEMBLY MAY 28, 2010
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CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2398

Introduced by Assembly Member John A. Pérez

February 19, 2010

An act to add Chapter 20 (commencing with Section 42970) to Part 3 of Division 30 of, and to repeal Section 42980 of, the Public Resources Code, relating to recycling.

LEGISLATIVE COUNSEL'S DIGEST

AB 2398, as amended, John A. Pérez. Product stewardship: carpet.

(1) 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.

The bill would require, by September 30, 2011, a manufacturer of carpets sold in this state, individually or through a carpet stewardship organization, to submit a carpet stewardship plan to the department, which would be required to include specified elements, including a funding mechanism that provides sufficient funding to carry out the

plan, including administrative, operational, and capital costs of the plan, *the payment of fees, and incentive payments*. The bill would require the funding mechanism to establish and provide for, on and after January 1, 2013, a carpet stewardship assessment to be added to the purchase price ~~per unit~~ of carpet sold in the state by a manufacturer to a California retailer or wholesaler or otherwise sold for use in the state and would require each retailer and wholesaler to add the assessment to the purchase price of all carpet sold in the state.

The bill would require, until April 1, 2015, the Carpet America Recovery Effort (CARE), a 3rd-party nonprofit *carpet* stewardship organization, to serve as the carpet stewardship organization and would allow, on and after April 1, 2015, a carpet stewardship organization appointed by one or more manufacturers, to submit a plan.

The bill would require, as of July 1, 2011, until January 1, 2013, a manufacturer of carpet to add an assessment of \$0.05 per square yard upon the purchase price of all carpet sold in the state by that manufacturer. The bill would require the assessment to be remitted on a quarterly basis, as appropriate, to CARE or would allow the manufacturer to retain that assessment. The bill would require these revenues to be spent by CARE or by an individual manufacturer, prior to approval of its carpet stewardship plan, only to implement early action measures that are consistent to achieve measurable improvements in the landfill diversion and recycling of postconsumer carpet.

The department would be required to, among other things, within 60 days after the department receives a plan, review and determine whether the plan complies with the bill's requirements and notify the submitter of its decision. The bill would specify that any plan not approved by March 31, 2012, is out of compliance until determined to be complete by the department.

The bill would provide that a manufacturer, wholesaler, or retailer, on and after April 1, 2012, that offers carpet for sale or promotional purposes without an approved plan for that carpet is not in compliance with the act's requirements. The bill would require the department, by July 1, 2012, and not later than January 1 and July 1 annually thereafter, to post a notice on its Internet Web site listing manufacturers that are in compliance with the bill's requirements. The bill would require a wholesaler or retailer that distributes or sells carpets to monitor the department's Internet Web site to determine if the sale of a manufacturer's carpet is in compliance.

The act would also require the carpet stewardship organization to demonstrate to the department that it has achieved continuous meaningful improvement in the rates of recycling and diversion and other specified goals in order to be in compliance.

Each manufacturer of carpet sold in the state, individually or through a carpet stewardship organization, would be required to prepare and submit to the department an annual report describing the activities carried out pursuant to the carpet stewardship plan.

A manufacturer or carpet stewardship organization submitting a carpet stewardship plan would be required to pay the department an annual administrative fee ~~when submitting the plan for review and approval~~, as determined by the department. The bill would also require the department to identify the direct development or regulatory costs incurred by the department prior to the submittal of carpet stewardship plans and to establish a fee in an amount adequate to cover those costs, that would be required to be paid by a carpet stewardship organization that submits a carpet stewardship plan. The bill would provide for the imposition of administrative civil penalties upon a person who violates the bill and would provide that ~~the manufacturer or carpet stewardship organization~~ *a plan submitter* whose plan is not approved by the department by March 31, 2012, is subject to those penalties until the plan is approved. The bill would establish the Carpet Stewardship Account in the Integrated Waste Management Fund and would require the fees collected by the department to be deposited in that account, for expenditure by the department, upon appropriation by the Legislature, to cover the department's cost to implement the bill's provisions. The bill would also establish the Carpet Stewardship Penalty Subaccount in the Integrated Waste Management Fund and would require that the civil penalties collected by the department pursuant to the bill's provisions be deposited in that subaccount, for expenditure by the department, upon appropriation by the Legislature, to cover the department's costs to implement the bill's provisions.

The bill would require the department and the Department of General Services to complete a study, by January 1, 2014, that examines the specifications for carpet purchases by the state, as provided in the NSF/ANSI 140-2007 Standard, Platinum Level, and to submit the study to the Governor and the Legislature, including recommendations for any appropriate changes to that standard.

The bill would provide that certain actions of a carpet stewardship organization or its members are not violations of the Cartwright Act or

certain provisions regulating unfair business practices or unfair competition.

The bill would require the Department of General Services to revise relevant procurement rules to ensure that postconsumer carpet that is removed from state buildings is managed in a manner consistent with the purposes of the bill.

(2) Existing law requires the Department of Toxic Substances Control to adopt regulations to establish a process to identify and prioritize chemicals or chemical ingredients in consumer products that may be considered as being a chemical of concern, as prescribed, and to establish a process for evaluating chemicals of concern in consumer products, and their potential alternatives, to determine how best to limit exposure or to reduce the level of hazard posed by a chemical of concern.

This bill would require the Department of Toxic Substances Control to fully consider the measures taken by the carpet industry pursuant to the program established by the bill, and the results of those measures, when considering whether to include carpet in the product registry adopted under those provisions or to otherwise regulate carpet pursuant to those provisions.

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) Discarded carpet is one of the 10 most prevalent waste
4 materials in California landfills, equaling 3.2 percent of waste by
5 volume disposed of in California in 2008. Because carpet is heavy
6 and bulky, it imposes a significant solid waste management cost
7 on local governments.

8 (b) Numerous products can be manufactured from recycled
9 carpets, including carpet backing and backing components, carpet
10 fiber, carpet underlayment, plastics and engineered materials, and
11 erosion control products. Several carpet recycling facilities
12 currently operate in California, producing products and feedstock
13 for products made from recycled carpet.

14 (c) The United States carpet industry has established a
15 third-party nonprofit organization, the Carpet America Recovery

1 Effort, also known as CARE, to work with state governments to
2 increase the amount of recycling and reuse of postconsumer carpet
3 and reduce the amount of carpet going to landfills.

4 (d) CARE represents at least 90 percent of United States carpet
5 manufacturers and 95 percent of the volume of carpet sold in the
6 United States.

7 (e) According to CARE, in 2008, the most recent year for which
8 data are available, 5.2 percent of carpet was diverted from landfills
9 and 4.3 percent was recycled.

10 (f) It is in the interest of the state to establish a program, working
11 to the extent feasible with the carpet industry and related
12 reclamation entities, to increase the landfill diversion and recycling
13 of postconsumer carpet generated in California.

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

16

17 CHAPTER 20. PRODUCT STEWARDSHIP FOR CARPETS

18

19 42970. The purpose of this chapter is to increase the amount
20 of postconsumer carpet that is diverted from landfills and recycled
21 into secondary products or otherwise managed in a manner that is
22 consistent with the state's hierarchy for waste management
23 practices pursuant to Section 40051.

24 42971. For purposes of this chapter, and unless the context
25 otherwise requires, the definitions in this section govern the
26 construction of this chapter:

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

30 (b) "CARE" means the Carpet America Recovery Effort, a
31 third-party nonprofit carpet stewardship organization incorporated
32 as a nonprofit corporation pursuant to Section 501(c)(3) of Title
33 26 of the United States Code in 2002 and established to increase
34 the reclamation and stewardship of postconsumer carpet.

35 (c) "CARE MOU" means the 2012 Memorandum of
36 Understanding for Carpet Stewardship, as to be negotiated among
37 the carpet industry, states, and nongovernmental organization
38 stakeholders as a successor to the 2002 memorandum of
39 understanding.

1 (d) (1) “Carpet” means a manufactured article that is used in
2 commercial or residential buildings affixed or placed on the floor
3 or building walking surface as a decorative or functional building
4 interior feature and that is primarily constructed of a top visible
5 surface of synthetic face fibers or yarns or tufts attached to a
6 backing system derived from synthetic or natural materials.

7 (2) “Carpet” includes, but is not limited to, a commercial or a
8 residential broadloom carpet or modular carpet tiles.

9 (3) “Carpet” does not include a rug, pad, cushion, or
10 underlayment used in conjunction with, or separately from, a
11 carpet.

12 (e) (1) “Carpet stewardship organization” or “organization”
13 means either of the following:

14 (A) An organization appointed by one or more manufacturers
15 to act as an agent on behalf of the manufacturer to design, submit,
16 and administer a carpet stewardship plan pursuant to this chapter.

17 (B) A carpet manufacturer that complies with this chapter as an
18 individual manufacturer.

19 (2) Notwithstanding paragraph (1), until April 1, 2015, CARE
20 shall be the sole carpet stewardship organization pursuant to
21 subparagraph (A) of paragraph (1).

22 This paragraph does not restrict the option of an individual carpet
23 manufacturer to comply with this chapter as a carpet stewardship
24 organization, on and after January 1, 2011, pursuant to
25 subparagraph (B) of paragraph (1).

26 (f) “Carpet stewardship plan” or “plan” means a plan written
27 by an individual manufacturer or a carpet stewardship organization,
28 on behalf of one or more manufacturers, that includes all of the
29 information required by Section 42972.

30 (g) “Consumer” means a purchaser, owner, or lessee of carpet,
31 including a person, business, corporation, limited partnership,
32 nonprofit organization, or governmental entity.

33 (h) “Department” means the Department of Resources Recycling
34 and Recovery.

35 (i) “Label” means a graphic representation of three chasing
36 arrows with a carpet roll inside the arrows, or an alternative design,
37 designed by CARE, after consultation with retailers and
38 wholesalers, and approved by the department for use on all invoices
39 or functionally equivalent billing documents pursuant to

1 subparagraph (C) of paragraph (3) of subdivision (c) of Section
2 42972.

3 (j) “Manufacturer” means, with regard to a carpet that is sold,
4 offered for sale, or distributed in the state any of the following:

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

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

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

17 (k) “Postconsumer carpet” means carpet that is no longer used
18 for its manufactured purpose.

19 (l) “Recycling” means the process, consistent with Section
20 40180, of converting postconsumer carpet into a useful product
21 that meets the quality standards necessary to be used in the
22 marketplace.

23 (m) “Retailer” means a person who offers new carpet in a retail
24 sale, as defined in Section 6007 of the Revenue and Taxation Code,
25 including a retail sale through any means, including remote
26 offerings such as sales outlets, catalogs, or an Internet Web site or
27 other similar electronic means.

28 (n) “Sell” or “sales” means a transfer of title of a carpet for
29 consideration, including a remote sale conducted through a sales
30 outlet, catalog, Internet Web site or similar electronic means. For
31 purposes of this chapter, “sell” or “sales” includes a lease through
32 which a carpet is provided to a consumer by a manufacturer,
33 wholesaler, or retailer.

34 (o) “Wholesaler” means a person who offers new carpet for sale
35 in this state in a sale that is not a retail sale, as defined in Section
36 6007 of the Revenue and Taxation Code, and in which the carpet
37 is intended to be resold.

38 42972. (a) On or before September 30, 2011, a manufacturer
39 of carpets sold in this state shall, individually or through a carpet

- 1 stewardship organization, submit a carpet stewardship plan to the
2 department that will do all of the following:
- 3 (1) Achieve the purposes of this chapter, as described in Section
4 42970, and meet the requirements of Section 42975.
 - 5 (2) Include goals that, to the extent feasible based on available
6 technology and information, increase the recycling of postconsumer
7 carpet, increase the diversion of postconsumer carpets from
8 landfills, increase the recyclability of carpets, and incentivize the
9 market growth of secondary products made from postconsumer
10 carpet. The goals established in the plan shall, at a minimum, be
11 equal to the goals established in the CARE MOU, if it has been
12 adopted at the time the plan is submitted to the department.
 - 13 (3) Describe proposed measures that will enable the management
14 of postconsumer carpet in a manner consistent with the state’s
15 solid waste management hierarchy, including, but not limited to,
16 source reduction, source separation and processing to segregate
17 and recover recyclable materials, and environmentally safe
18 management of materials that cannot feasibly be recycled.
 - 19 (4) Include a funding mechanism, consistent with subdivision
20 (c), that provides sufficient funding to carry out the plan, including
21 the administrative, operational, and capital costs of the plan,
22 payment of fees pursuant to Section 42977, and incentive payments
23 that will advance the purposes of this chapter.
 - 24 (5) Include education and outreach efforts to consumers,
25 commercial building owners, carpet installation contractors, and
26 retailers to promote their participation in achieving the purposes
27 of the carpet stewardship plan as described in paragraph (1). These
28 education and outreach materials may include, but are not limited
29 to, any of the following:
 - 30 (A) Signage that is prominently displayed and easily visible to
31 the consumer.
 - 32 (B) Written materials and templates of materials for reproduction
33 by retailers to be provided to carpet installation contractors and
34 consumers at the time of purchase or delivery or both.
 - 35 (C) Promotional materials or activities, or both, that explain the
36 purpose of carpet stewardship and the means by which it is being
37 carried out.
 - 38 (6) Include a process by which the financial activities of the
39 organization or individual manufacturer that are related to

1 implementation of the plan will be subject to an independent audit,
2 which may be reviewed by the department.

3 (b) The plan prepared pursuant to this section shall be designed
4 to accept and manage all suitable postconsumer carpet, regardless
5 of polymer type or primary materials of construction.

6 (c) (1) The funding mechanism required pursuant to paragraph
7 (4) of subdivision (a) shall establish and provide for, on and after
8 January 1, 2013, a carpet stewardship assessment per unit of carpet
9 sold in the state in an amount that cumulatively will adequately
10 fund the plan and be consistent with the purposes of the chapter.
11 The assessment shall be remitted to the carpet stewardship
12 organization on a quarterly basis and the carpet stewardship
13 organization may expend the assessment only to carry out the plan.

14 (2) The amount of the assessment and the anticipated revenues
15 from the assessment shall be specified in the plan and shall be
16 approved by the department as part of the plan. The amount of the
17 assessment shall be sufficient to meet, but not exceed, the
18 anticipated cost of carrying out the plan. The amount of the
19 assessment shall not create an unfair advantage in the marketplace.

20 (3) The assessment established pursuant to this subdivision and
21 Section 42972.5 is exempt from the taxes imposed by Part 1
22 (commencing with Section 6001) of Division 2 of the Revenue
23 and Taxation Code and shall meet both of the following
24 requirements:

25 (A) The assessment shall be added by a manufacturer to the
26 purchase price of all carpet sold by manufacturers to a California
27 retailer or wholesaler or otherwise sold for use in the state. *The*
28 *assessment shall be clearly visible on invoices or functionally*
29 *equivalent billing documents as a separate line item and shall be*
30 *accompanied by a brief description of the assessment or a label*
31 *approved by the department.*

32 (B) Each retailer and wholesaler shall add the assessment to the
33 purchase price of all carpet sold in the state. The assessment shall
34 be clearly visible on ~~an~~ invoices or functionally equivalent billing
35 documents as a separate line item and shall be accompanied by a
36 *brief description of the assessment or a label approved by the*
37 *department.*

38 (d) A carpet stewardship organization that submits a plan
39 pursuant to this section shall consult with retailers and wholesalers

1 in the development of the plan, in order to minimize the impacts
2 of the plan on retailers and wholesalers.

3 (e) A carpet stewardship organization shall notify the department
4 within 30 days after instituting a significant or material change to
5 an approved carpet stewardship plan.

6 42972.5. (a) Notwithstanding paragraph (1) of subdivision (c)
7 of Section 42972, on and after July 1, 2011, but not on or after
8 January 1, 2013, a manufacturer of carpet shall add a carpet
9 stewardship assessment of five cents (\$0.05) per square yard to
10 the purchase price of all carpet sold in the state by that
11 manufacturer. The assessment added pursuant to this subdivision
12 shall be remitted on a quarterly basis, as appropriate, to CARE or
13 be retained by the individual manufacturer referred to in
14 subparagraph (B) of paragraph (1) of subdivision (d) of Section
15 42971, for expenditure pursuant to subdivision (b).

16 (b) Prior to approval of a carpet stewardship plan, CARE or an
17 individual manufacturer shall spend revenues from the assessment
18 imposed pursuant to subdivision (a) only to implement early action
19 measures that are consistent with the purposes of this chapter and
20 that are designed to achieve measurable improvements in the
21 landfill diversion and recycling of postconsumer carpet.

22 42973. (a) (1) Within 60 days after the department receives
23 a plan submitted pursuant to Section 42972, it shall review the
24 plan, determine whether it complies with Section 42972, and notify
25 the submitter of its decision to approve or not approve the plan.

26 (2) On or after April 1, 2015, an organization appointed by one
27 or more manufacturers to act as an agent on behalf of the
28 manufacturer to design, submit, and administer a carpet stewardship
29 plan pursuant to this chapter may submit a plan to the department
30 pursuant to Section 42972 and that plan may be approved by the
31 department, subject to the requirements of paragraph (1), only if
32 the department makes both of the following findings:

33 (A) The plan will not have the effect of reducing the level of
34 diversion and recycling of postconsumer carpet that has been
35 achieved pursuant to this chapter at the time the department reviews
36 the plan.

37 (B) The amount of the assessment in the plan will not create an
38 unfair advantage in the marketplace for one or more of the
39 companies in the organization.

1 (b) If the department does not approve the plan, it shall describe
2 the reasons for its disapproval in the notice. The submitter may
3 revise and resubmit the plan within 60 days after receiving notice
4 of disapproval and the department shall review and approve or not
5 approve the revised plan within 60 days after receipt. Any plan
6 not approved by March 31, 2012, shall be out of compliance with
7 this chapter and the submitter of the plan is subject to the penalties
8 specified in Section 42978 until the plan is approved by the
9 department.

10 42974. (a) The department shall enforce this chapter.

11 (b) On and after April 1, 2012, a manufacturer, wholesaler, or
12 retailer that offers a carpet for sale in this state, or who offers a
13 carpet for promotional purposes in this state, is not in compliance
14 with this chapter and is subject to penalties pursuant to Section
15 42978, if the carpet is not subject to a plan that is submitted by an
16 organization that includes the manufacturer of that carpet, which
17 plan has been approved by the department pursuant to Section
18 42973.

19 (c) (1) On July 1, 2012, and not later than January 1 and July
20 1 annually thereafter, the department shall post a notice on its
21 Internet Web site listing manufacturers that are in compliance with
22 this chapter.

23 (2) A manufacturer that is not listed on the department's Internet
24 Web site pursuant to this subdivision, but demonstrates to the
25 satisfaction of the department that the manufacturer is in
26 compliance with this chapter before the next notice is required to
27 be posted, may request a certification letter from the department
28 stating that the manufacturer is in compliance. The letter shall
29 constitute proof of compliance with this chapter.

30 (d) A wholesaler or retailer that distributes or sells carpet shall
31 monitor the department's Internet Web site to determine if the sale
32 of a manufacturer's carpet is in compliance with the requirements
33 of this chapter. *Notwithstanding Section 42978, a wholesaler or*
34 *retailer otherwise in compliance with this chapter shall be deemed*
35 *in compliance with this section if, on the date the wholesaler or*
36 *retailer ordered or purchased carpet, the manufacturer was listed*
37 *as a compliant manufacturer on the department's Internet Web*
38 *site.*

39 42975. (a) In order to achieve compliance with this chapter,
40 a carpet stewardship organization shall, on or before July 1, 2013,

1 and annually thereafter, demonstrate to the department that it has
2 achieved continuous meaningful improvement in the rates of
3 recycling and diversion of postconsumer carpet subject to its
4 stewardship plan and in meeting the other goals included in the
5 organization's plan pursuant to paragraph (2) of subdivision (a)
6 of Section 42972. In determining compliance, the department shall
7 consider all of the following:

8 (1) The baseline rate of compliance against which the
9 demonstrated improvement is compared.

10 (2) The goals included in the CARE MOU.

11 (3) Information provided in the organization's report to the
12 department pursuant to Section 42976.

13 (b) If more than one organization submits a carpet stewardship
14 plan pursuant to this chapter, the department shall use information
15 submitted by the organization in its annual report pursuant to
16 Section 42976 to determine to what extent the recycling and
17 diversion rates and the achievement of the other goals included in
18 the plan are attributable to each organization and shall determine
19 compliance with this chapter accordingly.

20 42976. On or before July 1, 2013, and each year thereafter, a
21 manufacturer of carpet sold in the state shall, individually or
22 through a carpet stewardship organization, submit to the department
23 a report describing its activities to achieve the purposes of this
24 chapter, as described in Section 42970, and to comply with Section
25 42975. At a minimum, the report shall include all of the following:

26 (a) The amount of carpet sold by square yards and weight, in
27 the state during the reporting period. A carpet stewardship
28 organization with more than one manufacturer may use average
29 weight.

30 (b) The amount of postconsumer carpet recycled, by weight,
31 during the reporting period.

32 (c) The amount of postconsumer carpet recovered but not
33 recycled, by weight, and its ultimate disposition.

34 (d) The total cost of implementing the carpet stewardship plan.

35 (e) An evaluation of the effectiveness of the carpet stewardship
36 plan, and anticipated steps, if needed, to improve performance.

37 (f) Examples of educational materials that were provided to
38 consumers during the reporting period.

39 42977. (a) The carpet stewardship organization submitting a
40 carpet stewardship plan shall pay the department an annual

1 administrative fee. The department shall set the fee at an amount
2 that, when paid by every carpet stewardship organization that
3 submits a carpet stewardship plan, is adequate to cover the
4 department's full costs of administering and enforcing this chapter,
5 including any program development costs or regulatory costs
6 incurred by the department prior to carpet stewardship plans being
7 submitted. The department may establish a variable fee based on
8 relevant factors, including, but not limited to, the portion of carpets
9 sold in the state by members of the organization compared to the
10 total amount of carpet sold in the state by all organizations
11 submitting a carpet stewardship plan.

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

16 (c) The department shall identify the direct development or
17 regulatory costs it incurs pursuant to this chapter prior to the
18 submittal of a carpet stewardship plan and shall establish a fee in
19 an amount adequate to cover those costs, which shall be paid by
20 a carpet stewardship organization that submits a carpet stewardship
21 plan. The fee established pursuant to this subdivision shall be paid
22 in three equal payments pursuant to the schedule specified in
23 subdivision (d).

24 (d) A carpet stewardship organization subject to this section
25 shall pay the department the administrative fee pursuant to
26 subdivision (a) on or before July 1, 2012, and annually thereafter
27 and the applicable portion of the fee pursuant to subdivision (c)
28 on July 1, 2012, and annually thereafter through July 1, 2014. Each
29 year after the initial payment, the annual administrative fee may
30 not exceed 5 percent of the aggregate assessment collected for the
31 preceding calendar year.

32 (e) The department shall deposit the fees collected pursuant to
33 this section into the Carpet Stewardship Account created pursuant
34 to Section 42977.1.

35 42977.1. (a) The Carpet Stewardship Account and the Carpet
36 Stewardship Penalty Subaccount are hereby established in the
37 Integrated Waste Management Fund.

38 (b) All fees collected by the department pursuant to this article
39 shall be deposited in the Carpet Stewardship Account and may be

1 expended by the department, upon appropriation by the Legislature,
2 to cover the department's costs to implement this chapter.

3 (c) All civil penalties collected pursuant to this article shall be
4 deposited in the Carpet Stewardship Penalty Subaccount and may
5 be expended by the department, upon appropriation by the
6 Legislature, to cover the department's costs to implement this
7 chapter.

8 42978. (a) A civil penalty up to the following amounts may
9 be administratively imposed by the department on any person who
10 is in violation of any provision of this chapter:

11 (1) One thousand dollars (\$1,000) per day.
12 (2) Ten thousand dollars (\$10,000) per day if the violation is
13 intentional, knowing, or negligent.

14 (b) In assessing or reviewing the amount of a civil penalty
15 imposed pursuant to subdivision (a) for a violation of this chapter,
16 the department or the court shall consider all of the following:

- 17 (1) The nature and extent of the violation.
- 18 (2) The number and severity of the violation or violations.
- 19 (3) The economic effect of the penalty on the violator.
- 20 (4) Whether the violator took good faith measures to comply
21 with this chapter and the period of time over which these measures
22 were taken.
- 23 (5) The willfulness of the violator's misconduct.
- 24 (6) The deterrent effect that the imposition of the penalty would
25 have on both the violator and the regulated community.
- 26 (7) Any other factor that justice may require.

27 42979. (a) This chapter does not limit, supersede, duplicate,
28 or otherwise conflict with the authority of the Department of Toxic
29 Substances Control under Section 25257.1 of the Health and Safety
30 Code to fully implement Article 14 (commencing with Section
31 25251) of Chapter 6.5 of Division 20 of the Health and Safety
32 Code, including the authority of the department to include a carpet
33 in a product registry adopted pursuant to that article.

34 (b) Notwithstanding subdivision (a), the Department of Toxic
35 Substances Control shall fully consider the measures taken by the
36 carpet industry pursuant to this chapter, and the results of those
37 measures, when considering whether to include carpet in a product
38 registry adopted pursuant to, or to otherwise regulate carpet
39 pursuant to, Article 14 (commencing with Section 25251) of
40 Chapter 6.5 of Division 20 of the Health and Safety Code.

1 42980. (a) On or before January 1, 2014, the department and
2 the Department of General Services shall complete a study that
3 examines the specifications for carpet purchases by the state, as
4 provided in the American National Standards Institute (NSF/ANSI)
5 140-2009 Standard, Platinum Level, as in effect on January 1,
6 2011 or the most current version in effect, and shall submit the
7 study to the Governor and the Legislature pursuant to Section 9795
8 of the Government Code, including recommendation for any
9 appropriate changes to that standard. In examining the standard
10 and recommending changes to the standard, the department and
11 the Department of General Services shall consider all of the
12 following:

13 (1) Any changes to the standard that would further the purpose
14 of this chapter.

15 (2) Any changes to the standard that would improve the
16 environmental sustainability of carpet purchased by the state.

17 (3) The life-cycle impacts of proposed changes to the standard.

18 (4) The impacts of the proposed changes to the standard on
19 source reduction.

20 (5) The impacts of the proposed changes to the standard on the
21 recyclability of carpet.

22 (6) Economic and technological barriers to the proposed changes
23 to the standard.

24 (b) The department and Department of General Services shall
25 hold at least one workshop to receive comments from interested
26 stakeholders prior to the completion of the study.

27 (c) Pursuant to Section 10231.5 of the Government Code, this
28 section is repealed on January 1, 2018.

29 42981. (a) Except as provided in subdivision (b), any action
30 by a carpet stewardship organization or its members that relates
31 to any of the following is not a violation of the Cartwright Act
32 (Chapter 2 (commencing with Section 16700) of Part 2 of Division
33 7 of the Business and Professions Code), the Unfair Practices Act
34 (Chapter 4 (commencing with Section 17000) of Part 2 of Division
35 7 of the Business and Professions Code), or the Unfair Competition
36 Law (Chapter 5 (commencing with Section 17200) of Part 2 of
37 Division 7 of the Business and Professions Code):

38 (1) The creation, implementation, or management of a carpet
39 stewardship plan approved by the department pursuant to Section

1 42973 and the types or quantities of carpet being recycled or
2 otherwise managed as described in Section 42970.

3 (2) The cost and structure of an approved carpet stewardship
4 plan.

5 (3) The establishment, administration, or disbursement of a
6 carpet stewardship assessment as described in Section 42972 or
7 42972.5.

8 (b) Subdivision (a) does not apply to an agreement that does
9 any of the following:

10 (1) Fixes a price of or for carpet, except for any agreement
11 related to a carpet stewardship assessment pursuant to Section
12 42972.5 or to a carpet stewardship plan approved by the department
13 and otherwise in accordance with this chapter.

14 (2) Fixes the output of production of carpet.

15 (3) Restricts the geographic area in which, or customers to
16 whom, carpet will be sold.

17 42982. The Department of General Services shall, to the extent
18 feasible and within existing resources, take appropriate steps,
19 including, but not limited to, revising relevant procurement rules,
20 to ensure that postconsumer carpet that is removed from state
21 buildings is managed in a manner consistent with the purpose of
22 this chapter.

23 42983. It is the intent of the Legislature to review any federal
24 law that has the purpose of managing postconsumer carpet in a
25 manner consistent with this chapter and to consider the extent to
26 which the program created by that federal law will, at a minimum,
27 achieve the same levels of landfill diversion and recycling of
28 postconsumer carpet in California as this chapter.