

AMENDED IN SENATE JANUARY 6, 2014

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 245

**Introduced by Senator Correa
(Principal coauthor: Senator Calderon)**

February 12, 2013

An act to ~~add Chapter 6 (commencing with Section 48800) to Part 7 of Division 30 of the Public Resources Code, relating to recycling~~ amend Section 1632 of the Civil Code, relating to consumer affairs.

LEGISLATIVE COUNSEL'S DIGEST

SB 245, as amended, Correa. ~~Recycling: mattresses. Contracts.~~

Existing law states findings and declarations of the Legislature relating to consumer information and protections afforded to the state's diverse population in which the number of Californians who speak languages other than English as their primary language at home has increased.

This bill would revise information contained in those findings and declarations relating to the languages most widely spoken in households with limited English proficiency and the percentage of Californians who speak a language other than English in their homes, based upon more recent census data.

~~Existing law requires a retailer of various specified products, such as rechargeable batteries and cell phones, sold in the state to have in place a system for the acceptance and collection of those products for reuse, recycling, or proper disposal.~~

~~This bill would enact the "Used Mattress Recycling Act" and would define terms for purposes of the act.~~

The bill would require a qualified industry association, or a successor organization, to establish a mattress recycling organization by November 1, 2014, and would require each manufacturer and retailer to register with the mattress recycling organization by February 1, 2015. The bill would prohibit a manufacturer or a retailer from taking specified actions with regard to selling or distributing a mattress in the state after that date, unless the manufacturer or retailer is in compliance with the act, as specified:

The bill would require the organization, by July 1, 2015, to develop a state plan for recycling used mattresses that includes specified goals and elements and to submit the plan to the Department of Resources Recycling and Recovery. The bill would require the department to review the plan for consistency and to notify the organization of any inconsistencies within 90 days after submittal of the plan. The bill would provide that if the department does not find any inconsistencies, the plan would be deemed approved by the department. The bill would require the organization to implement the approved plan by November 1, 2015.

The bill would require the organization to annually prepare and approve a proposed plan budget for the next calendar year and to submit the approved budget to the department. The department would be required to review the budget, as specified.

The department would be required to notify the organization of the department's direct costs in implementing the act and the organization would be required to reimburse the department for those costs. The bill would require the department to deposit these amounts submitted by the organization into the Used Mattress Recycling Account, which the bill would establish in the Integrated Waste Management Fund. The bill would require the department to expend the moneys in the account, upon appropriation by the Legislature, to administer and enforce the act.

The bill would require the organization to annually set the amount of a state mattress recycling charge that would be added to the purchase price of a mattress, and would require a manufacturer, retailer, wholesaler, distributor, or other party that sells a mattress to add the charge to the purchase price for the mattress. This bill would constitute a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

The bill would specify procedures for the collection and disbursement of the charge by the organization. The bill would require the organization to be subject to an annual audit and to annually publish, and make publically available on its Internet Web site, a report regarding the implementation of the plan. The organization would be required to submit the annual report to the department, for review, as specified.

The bill would require the organization to post information regarding compliance with the act on its Internet Web site and would require a retailer that distributes or sells a mattress to monitor the organization’s Internet Web site.

The department would be authorized to impose an administrative civil penalty on a manufacturer or retailer who sells a mattress in violation of the act. The department would be required to deposit these penalties into the Mattress Recovery and Recycling Penalty Account, which the bill would create in the Integrated Waste Management Fund. The department would be authorized to expend the moneys in that account, upon appropriation by the Legislature, to implement the act.

The department would be required to annually review the organization’s compliance with the act and notify the organization, as specified. The department would also be required to periodically, but not less than once every 3 months, determine whether a federal statute has been enacted that requires a national used mattress recycling plan. If the department determines that this federal statute has been enacted, the department would be required to post this information on its Internet Web site and submit a notice to the Secretary of State and the Office of the Legislative Counsel and the act would become inoperative 30 days after the date that the department issues that notice.

Vote: $\frac{2}{3}$ -majority. Appropriation: no. Fiscal committee: *yes-no*. State-mandated local program: no.

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

- 1 SECTION 1. Section 1632 of the Civil Code is amended to
- 2 read:
- 3 1632. (a) The Legislature hereby finds and declares all of the
- 4 following:
- 5 (1) This section was enacted in 1976 to increase consumer
- 6 information and protections for the state’s sizeable and growing
- 7 Spanish-speaking population.

1 (2) Since 1976, the state's population has become increasingly
2 diverse and the number of Californians who speak languages other
3 than English as their primary language at home has increased
4 dramatically.

5 ~~(3) According to data from the United States Census of 2000,~~
6 ~~of the more than 12 million Californians who speak a language~~
7 ~~other than English in the home, approximately 4.3 million speak~~
8 ~~an Asian dialect or another language other than Spanish. The top~~
9 ~~five languages other than English most widely spoken by~~
10 ~~Californians in their homes are Spanish, Chinese, Tagalog,~~
11 ~~Vietnamese, and Korean. Together, these languages are spoken~~
12 ~~by approximately 83 percent of all Californians who speak a~~
13 ~~language other than English in their homes.~~

14 *(3) According to data from the American Community Survey,*
15 *which has replaced the decennial census for detailed*
16 *socioeconomic information about United States residents, the top*
17 *five languages other than English, that are most widely spoken in*
18 *households with limited English proficiency, are Spanish, Chinese,*
19 *Filipino/Tagalog, Vietnamese, and Korean, based on data from*
20 *combined years 2009 through 2011. Limited English proficiency*
21 *includes survey participants who do not speak English well or do*
22 *not speak English at all. Among the 3.8 million households in*
23 *California with limited English proficiency, approximately 3.5*
24 *million people speak either Spanish, Chinese, Filipino/Tagalog,*
25 *Vietnamese, or Korean at home. This compares to approximately*
26 *19.6 million people, who speak only English at home.*

27 (b) Any person engaged in a trade or business who negotiates
28 primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean,
29 orally or in writing, in the course of entering into any of the
30 following, shall deliver to the other party to the contract or
31 agreement and prior to the execution thereof, a translation of the
32 contract or agreement in the language in which the contract or
33 agreement was negotiated, ~~which~~ *that* includes a translation of
34 every term and condition in that contract or agreement:

35 (1) A contract or agreement subject to the provisions of Title 2
36 (commencing with Section 1801) of, and Chapter 2b (commencing
37 with Section 2981) and Chapter 2d (commencing with Section
38 2985.7) of Title 14 of, Part 4 of Division 3.

1 (2) A loan or extension of credit secured other than by real
2 property, or unsecured, for use primarily for personal, family or
3 household purposes.

4 (3) A lease, sublease, rental contract or agreement, or other term
5 of tenancy contract or agreement, for a period of longer than one
6 month, covering a dwelling, an apartment, or mobilehome, or other
7 dwelling unit normally occupied as a residence.

8 (4) Notwithstanding paragraph (2), a loan or extension of credit
9 for use primarily for personal, family or household purposes ~~where~~
10 *in which* the loan or extension of credit is subject to the provisions
11 of Article 7 (commencing with Section 10240) of Chapter 3 of
12 Part 1 of Division 4 of the Business and Professions Code, or
13 Division 7 (commencing with Section 18000), or Division 9
14 (commencing with Section 22000) of the Financial Code.

15 (5) Notwithstanding paragraph (2), a reverse mortgage as
16 described in Chapter 8 (commencing with Section 1923) of Title
17 4 of Part 4 of Division 3.

18 (6) A contract or agreement, containing a statement of fees or
19 charges, entered into for the purpose of obtaining legal services,
20 when the person who is engaged in business is currently licensed
21 to practice law pursuant to Chapter 4 (commencing with Section
22 6000) of Division 3 of the Business and Professions Code.

23 (7) A foreclosure consulting contract subject to Article 1.5
24 (commencing with Section 2945) of Chapter 2 of Title 14 of Part
25 4 of Division 3.

26 (c) Notwithstanding subdivision (b), for a loan subject to this
27 part and to Article 7 (commencing with Section 10240) of Chapter
28 3 of Part 1 of Division 4 of the Business and Professions Code,
29 the delivery of a translation of the statement to the borrower
30 required by Section 10240 of the Business and Professions Code
31 in any of the languages specified in subdivision (b) in which the
32 contract or agreement was negotiated, is in compliance with
33 subdivision (b).

34 (d) At the time and place where a lease, sublease, or rental
35 contract or agreement described in subdivision (b) is executed,
36 notice in any of the languages specified in subdivision (b) in which
37 the contract or agreement was negotiated shall be provided to the
38 lessee or tenant.

39 (e) Provision by a supervised financial organization of a
40 translation of the disclosures required by Regulation M or

1 Regulation Z, and, if applicable, Division 7 (commencing with
2 Section 18000) or Division 9 (commencing with Section 22000)
3 of the Financial Code in any of the languages specified in
4 subdivision (b) in which the contract or agreement was negotiated,
5 prior to the execution of the contract or agreement, shall also be
6 deemed in compliance with the requirements of subdivision (b)
7 with regard to the original contract or agreement.

8 (1) “Regulation M” and “Regulation Z” mean any rule,
9 regulation, or interpretation promulgated by the Board of
10 Governors of the Federal Reserve System and any interpretation
11 or approval issued by an official or employee duly authorized by
12 the board to issue interpretations or approvals dealing with,
13 respectively, consumer leasing or consumer lending, pursuant to
14 the Federal Truth in Lending Act, as amended (15 U.S.C. Sec.
15 1601 et seq.).

16 (2) As used in this section, “supervised financial organization”
17 means a bank, savings association as defined in Section 5102 of
18 the Financial Code, credit union, or holding company, affiliate, or
19 subsidiary thereof, or any person subject to Article 7 (commencing
20 with Section 10240) of Chapter 3 of Part 1 of Division 4 of the
21 Business and Professions Code, or Division 7 (commencing with
22 Section 18000) or Division 9 (commencing with Section 22000)
23 of the Financial Code.

24 (f) At the time and place where a contract or agreement
25 described in paragraph (1) or (2) of subdivision (b) is executed, a
26 notice in any of the languages specified in subdivision (b) in which
27 the contract or agreement was negotiated shall be conspicuously
28 displayed to the effect that the person described in subdivision (b)
29 is required to provide a contract or agreement in the language in
30 which the contract or agreement was negotiated, or a translation
31 of the disclosures required by law in the language in which the
32 contract or agreement was negotiated, as the case may be. If a
33 person described in subdivision (b) does business at more than one
34 location or branch, the requirements of this section shall apply
35 only with respect to the location or branch at which the language
36 in which the contract or agreement was negotiated is used.

37 (g) The term “contract” or “agreement,” as used in this section,
38 means the document creating the rights and obligations of the
39 parties and includes any subsequent document making substantial
40 changes in the rights and obligations of the parties. The term

1 “contract” or “agreement” does not include any subsequent
2 documents authorized or contemplated by the original document
3 such as periodic statements, sales slips or invoices representing
4 purchases made pursuant to a credit card agreement, a retail
5 installment contract or account or other revolving sales or loan
6 account, memoranda of purchases in an add-on sale, or refinancing
7 of a purchase as provided by, or pursuant to, the original document.

8 The term “contract” or “agreement” does not include a home
9 improvement contract as defined in Sections 7151.2 and 7159 of
10 the Business and Professions Code, nor does it include plans,
11 specifications, description of work to be done and materials to be
12 used, or collateral security taken or to be taken for the retail buyer’s
13 obligation contained in a contract for the installation of goods by
14 a contractor licensed pursuant to Chapter 9 (commencing with
15 Section 7000) of Division 3 of the Business and Professions Code,
16 if the home improvement contract or installation contract is
17 otherwise a part of a contract described in subdivision (b).

18 Matters ordinarily incorporated by reference in contracts or
19 agreements as described in paragraph (3) of subdivision (b),
20 including, but not limited to, rules and regulations governing a
21 tenancy and inventories of furnishings to be provided by the person
22 described in subdivision (b), are not included in the term “contract”
23 or “agreement.”

24 (h) This section does not apply to any person engaged in a trade
25 or business who negotiates primarily in a language other than
26 English, as described by subdivision (b), if the party with whom
27 he or she is negotiating is a buyer of goods or services, or receives
28 a loan or extension of credit, or enters an agreement obligating
29 himself or herself as a tenant, lessee, or sublessee, or similarly
30 obligates himself or herself by contract or lease, and the party
31 negotiates the terms of the contract, lease, or other obligation
32 through his or her own interpreter.

33 As used in this subdivision, “his or her own interpreter” means
34 a person, not a minor, able to speak fluently and read with full
35 understanding both the English language and any of the languages
36 specified in subdivision (b) in which the contract or agreement
37 was negotiated, and who is not employed by, or whose service is
38 made available through, the person engaged in the trade or
39 business.

1 (i) Notwithstanding subdivision (b), a translation may retain the
 2 following elements of the executed English-language contract or
 3 agreement without translation: names and titles of individuals and
 4 other persons, addresses, brand names, trade names, trademarks,
 5 registered service marks, full or abbreviated designations of the
 6 make and model of goods or services, alphanumeric codes,
 7 numerals, dollar amounts expressed in numerals, dates, and
 8 individual words or expressions having no generally accepted
 9 non-English translation. It is permissible, but not required, that
 10 this translation be signed.

11 (j) The terms of the contract or agreement ~~which~~ *that* is executed
 12 in the English language shall determine the rights and obligations
 13 of the parties. However, the translation of the contract or the
 14 disclosures required by subdivision (e) in any of the languages
 15 specified in subdivision (b) in which the contract or agreement
 16 was negotiated shall be admissible in evidence only to show that
 17 no contract was entered into because of a substantial difference in
 18 the material terms and conditions of the contract and the translation.

19 (k) Upon a failure to comply with the provisions of this section,
 20 the person aggrieved may rescind the contract or agreement in the
 21 manner provided by this chapter. ~~When~~ *If* the contract for a
 22 consumer credit sale or consumer lease ~~which~~ *that* has been sold
 23 and assigned to a financial institution is rescinded pursuant to this
 24 subdivision, the consumer shall make restitution to and have
 25 restitution made by the person with whom he or she made the
 26 contract, and shall give notice of rescission to the assignee.
 27 Notwithstanding that the contract was assigned without recourse,
 28 the assignment shall be deemed rescinded and the assignor shall
 29 promptly repurchase the contract from the assignee.

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**All matter omitted in this version of the bill
 appears in the bill as amended in the
 Senate, April 1, 2013. (JR11)**