

Introduced by Senator HancockFebruary 13, 2013

An act to add Chapter 21 (commencing with Section 42985) to Part 3 of Division 30 of the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

SB 254, as introduced, Hancock. Solid waste: used mattresses: recycling and recovery.

(1) 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 establish the Used Mattress Recovery and Recycling Act and would define terms for purposes of the act. The bill would require a manufacturer of mattresses sold in this state, individually, collectively, or through a stewardship organization, to provide in an electronic format an interim plan to the Department of Resources Recycling and Recovery by April 1, 2014, that ensures that the manufacturer will be responsible for the collection and recycling of used mattresses generated by consumers. The bill would require a manufacturer to implement the interim plan by July 1, 2014, and to continue implementation until a mattress stewardship plan is approved, conditionally approved, or disapproved by the department.

The bill would require a manufacturer of mattresses sold in this state, individually, collectively, or through a stewardship organization, to submit a mattress stewardship plan to the department by April 1, 2015. The bill would specify the requirements to be included in the plan, including meeting specified recycling goals. The bill would specify a

procedure for the department's approval, disapproval, or conditional approval of a plan.

The bill would require a retailer of mattresses on and after July 1, 2014, to offer the consumer the option of picking up a used mattress, at the time a new mattress is delivered to the consumer, at no additional cost to the consumer.

The bill would prohibit a manufacturer or retailer from selling or offering for sale a mattress to any person in this state unless the manufacturer is in compliance with the act and would prohibit a manufacturer from selling a mattress on or after August 1, 2015, if the manufacturer is not covered by an approved or conditionally approved plan. The bill would require the department, by August 1, 2015, except as specified, and by July 1 annually thereafter, to post on its Internet Web site a listing of manufacturers that have submitted a plan and to annually post a listing of manufacturers in compliance with the act. The bill would require retailers that distribute or sell mattresses to monitor the department's Internet Web site to determine if the manufacturer of a mattress is in compliance with the requirements of the act.

The bill would require a manufacturer, individually, collectively, or through a stewardship organization, to submit an annual report to the department describing its mattress stewardship efforts. The bill would require the department to review the annual report within 90 days of receipt and adopt a finding of compliance or noncompliance with the requirements of the act. The bill would authorize the department to require a manufacturer or stewardship organization submitting that annual report that is not meeting the act's requirements, to amend and resubmit the plan and would require the department to remove the manufacturer's name from the listing of manufacturers that are in compliance, until as specified.

The bill would require recyclers and renovators, as defined, to submit an annual report to the department regarding mattresses received and recycled and would require the operator of a solid waste facility to submit an annual report to the department regarding the number of used mattresses received and designated for recycling or renovation in the state during the preceding calendar year.

The bill would authorize the department to require a manufacturer to pay the department a quarterly administrative fee, as determined by the department.

The bill would require these fees to be deposited into the Mattress Recovery and Recycling Account, which the bill would establish in the

Integrated Waste Management Fund. The bill would provide that the moneys in the account would be available for expenditure by the department, upon appropriation by the Legislature.

The bill would require a manufacturer or stewardship organization to provide the department with reasonable and timely access, as determined by the department, to its facilities or operations, and to provide the department with any relevant records. The bill would require the records to be maintained and accessible for 3 years. The bill would require all reports and records to be provided to the department under penalty of perjury, thereby imposing a state-mandated local program by creating a new crime.

The bill would allow the department to impose an administrative civil penalty in specified amounts on a manufacturer, stewardship organization, or retailer who is in violation of the act. The bill would require the department to deposit all penalties collected into the Mattress Recovery and Recycling Penalty Account, which the bill would establish in the Integrated Waste Management Fund. The bill would provide that the moneys in the penalty account would be available for expenditure by the department, upon appropriation by the Legislature. The bill would also authorize the department to take other actions to enforce the act.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Chapter 21 (commencing with Section 42985)
2 is added to Part 3 of Division 30 of the Public Resources Code, to
3 read:

4
5 CHAPTER 21. USED MATTRESS RECOVERY AND RECYCLING ACT
6

7 42985. (a) The Legislature finds and declares all of the
8 following:

9 (1) In order to reduce illegal dumping, increase recycling, and
10 substantially reduce public agency costs for the end-of-life

1 management of used mattresses, the Used Mattress Recovery and
2 Recycling Act is hereby established by this chapter to require
3 manufacturers of mattresses sold in this state to develop, finance,
4 and implement a convenient and cost-effective program to collect,
5 reuse where possible, and recycle used mattresses generated in
6 this state.

7 (2) Consistent with existing state policy, the program developed
8 and implemented by manufacturers of mattresses sold in this state
9 shall be capable of the recovery and recycling of at least 75 percent
10 of used mattresses generated in this state annually on and after
11 January 1, 2020.

12 (b) This chapter shall be known, and may be cited, as the Used
13 Mattress Recovery and Recycling Act.

14 (c) This chapter does not prohibit a manufacturer from
15 internalizing the cost of implementing this chapter.

16 42986. For the purposes of this chapter, the following terms
17 have the following meanings:

18 (a) "Account" means the Mattress Recovery and Recycling
19 Account established pursuant to Section 42995.

20 (b) "Common carrier" has the same meaning as defined in
21 Section 2168 of the Civil Code.

22 (c) "Consumer" means an owner of a mattress, including a
23 person, business, corporation, limited partnership, nonprofit
24 organization, or governmental entity.

25 (d) "Interim plan" means a plan provided to the department
26 pursuant to Section 42987.

27 (e) (1) "Manufacturer" means one of the following persons:

28 (A) A person who manufactures a mattress and who sells, offers
29 for sale, or distributes the mattress in the state under that person's
30 own name or brand.

31 (B) If there is no person who is a manufacturer of the mattress
32 for the purpose of subparagraph (A), the manufacturer is the person
33 named on the label pursuant to Section 1633.12 of Title 16 of the
34 Code of Federal Regulations.

35 (2) A retailer whose name or brand may be on a mattress is not
36 the manufacturer of the mattress, unless the retailer actually made,
37 produced, and assembled that product.

38 (f) (1) "Mattress" means any resilient material or combination
39 of materials that is enclosed by a twin size or larger mattress

1 ticking, used alone or in combination with other products, and that
2 is intended for or promoted for sleeping upon.

3 (2) “Mattress” includes any foundation and any renovation.

4 (3) “Mattress” does not include an unattached mattress pad,
5 unattached mattress topper, sleeping bag, pillow, car bed, carriage,
6 basket, dressing table, stroller, playpen, infant carrier, lounge pad,
7 crib bumper, liquid and gaseous filled ticking including any water
8 bed and air mattress that does not contain upholstery material
9 between the ticking and the mattress core, and upholstered furniture
10 that does not otherwise contain a detachable mattress.

11 (g) “Mattress stewardship plan” or “plan” means a plan
12 submitted to the department pursuant to Section 42988.

13 (h) “Recycle” or “recycling” has the same meaning as defined
14 in Section 40180. For the purposes of this chapter renovation shall
15 be considered recycling.

16 (i) “Recycler” means a person that engages in the manual or
17 mechanical separation of mattresses to substantially recover
18 components and commodities contained in the mattresses for the
19 purpose of reuse or recycling.

20 (j) (1) “Renovate” or “renovation” means altering a mattress
21 for the purpose of resale and includes any one, or a combination
22 of, the following:

23 (A) Replacing the mattress ticking or filling.

24 (B) Adding additional filling.

25 (C) Rebuilding a mattress.

26 (D) Replacing components with new or recycled materials.

27 (2) “Renovate” or “renovation” does not include any of the
28 following:

29 (A) Stripping of a mattress of its ticking or filling without adding
30 new material.

31 (B) Sterilizing or sanitizing a mattress without otherwise altering
32 the mattress.

33 (C) Altering a mattress by a renovator when a person retains
34 the altered mattress for lease, rental, or personal use.

35 (D) Refurbishing that disqualifies a mattress for a yellow
36 wholesale renovator tag to be affixed to the mattress, in accordance
37 with the regulations adopted by the Department of Consumer
38 Affairs.

39 (k) “Renovator” means a person that renovates used mattresses.

1 (l) “Retailer” means a person who sells mattresses in the state
2 or offers to consumers mattresses in the state through any means,
3 including, but not limited to, by remote offering such as sales
4 outlets or catalogs.

5 (m) “Stewardship organization” means a nonprofit organization
6 created by one or more manufacturers to act on behalf of the
7 manufacturer to provide an interim plan to the department pursuant
8 to Section 42987 or to design, submit, and implement a mattress
9 stewardship plan pursuant to Section 42988.

10 (n) “Used mattress” means a mattress that is no longer used for
11 its manufactured purpose.

12 (o) “Voucher” means a promise to a consumer of a new mattress
13 to provide that consumer with a future, no cost take back of a used
14 mattress for recycling, as described in this chapter. The voucher
15 may include a payment, coupon, chit, or other form of paper or
16 electronic authorization that enables the consumer to drop off a
17 used mattress for recycling at any recycling facility or solid waste
18 facility at no cost to the consumer, and which the operator of the
19 facility can then redeem from a manufacturer or the manufacturer’s
20 agent in order to cover the cost of recovery and recycling.

21 42987. (a) On or before April 1, 2014, a manufacturer of
22 mattresses sold in this state shall, individually, collectively, or
23 through a stewardship organization, provide an interim plan to the
24 department in an electronic format.

25 (b) The interim plan shall ensure that the manufacturer will be
26 responsible for the collection and recycling of used mattresses
27 generated by consumers. The interim plan shall include a
28 description of activities that the manufacturer shall undertake as
29 part of the plan and shall require the manufacturer to do all of the
30 following:

31 (1) Ensure that when a new mattress is delivered to a consumer
32 by a retailer, the consumer is given the option of having a used
33 mattress picked up for recycling at the time of delivery, at no
34 additional cost to the consumer or retailer. A retailer may contract
35 out to a third-party entity for the pickup of used mattresses.

36 (2) Ensure that when a new mattress is purchased and picked
37 up by a consumer, the consumer is given a voucher that provides
38 for the dropoff and recycling of a used mattress at a local solid
39 waste or recycling facility at no additional cost to the consumer,
40 retailer, or facility.

1 (3) Otherwise provide consumers with convenient opportunities
2 to properly dispose of their used mattresses.

3 (c) The department shall post the interim plan provided pursuant
4 to this section on its Internet Web site.

5 (d) On and after July 1, 2014, a manufacturer shall implement
6 the interim plan provided pursuant to subdivision (a) and shall
7 continue implementation of the interim plan until the mattress
8 stewardship plan required by Section 42988 is approved,
9 conditionally approved, or disapproved by the department pursuant
10 to Section 42989.

11 (e) A manufacturer shall provide retailers with relevant materials
12 60 days prior to implementation of the interim plan.

13 42988. (a) On or before April 1, 2015, a manufacturer shall,
14 individually, collectively, or through a mattress stewardship
15 organization, submit a mattress stewardship plan to the department
16 that meets the requirements of this section.

17 (b) A mattress stewardship plan submitted pursuant to this
18 section shall include all of the following elements:

19 (1) Program activities to achieve the used mattress recycling
20 goals established in subdivision (c).

21 (2) Existing and planned used mattress take-back sites or
22 collection locations, including estimated timelines for any planned
23 expansion, if applicable.

24 (3) Program objectives consistent with the state's solid waste
25 management hierarchy

26 (4) Ensure that local governments and solid waste facilities are
27 provided with a mechanism for the recovery of illegally dumped
28 used mattresses at no additional cost to the local government or
29 solid waste facility.

30 (5) Arrangements for the pickup of used mattresses that have
31 been accepted at solid waste facilities and for the delivery of those
32 used mattresses to a recycling or refurbishment facility.

33 (6) A program performance measurement that would collect
34 program data for purposes of the report required by Section 42991,
35 in accordance with the following:

36 (A) If the department does not provide a methodology for the
37 program performance methodology pursuant to subdivision (e) of
38 Section 42991, the plan shall include a methodology for estimating,
39 with regard to the manufacturers covered by the plan, the amount
40 of mattresses sold in the state and the used mattresses available

1 for collection in the state, and for quantifying the number of used
2 mattresses collected and recycled in the state.

3 (B) The program plan performance measurement may aggregate
4 the total number of mattresses sold and recycled by all participating
5 members in a plan submitted by manufacturers acting collectively
6 or through a stewardship organization.

7 (7) Education and outreach efforts to consumers and other
8 individuals within the supply chain to promote their participation
9 in achieving the purposes of the plan.

10 (8) A consultation process with affected stakeholders.

11 (9) The names of manufacturers and brands covered under the
12 plan.

13 (10) Procedures to ensure implementation of the plan if the
14 manufacturer or the stewardship organization no longer exists due
15 to bankruptcy, dissolution, or similar processes.

16 (11) Reimbursement of solid waste facilities for the reasonable
17 costs of collecting, storing, and processing used mattresses in the
18 implementation of the plan pursuant to this chapter.

19 (12) Policies to ensure there are adequate and convenient
20 opportunities for the collection, acceptance, and recovery for
21 recycling of used mattresses in low-income communities, in
22 accordance with the poverty line annually established by the
23 Secretary of California Health and Human Services pursuant to
24 the federal Omnibus Budget Reconciliation Act of 1981 (Public
25 Law 97-35), as amended.

26 (13) Strategies to give priority to recycling facilities that are the
27 closest to the consumer or retailers.

28 (14) A program to ensure that used mattresses recovered by a
29 retailer pursuant to Section 42990 are delivered to a recycling
30 facility or solid waste facility for recycling. A manufacturer or
31 retailer may contract out to a third-party entity for the transportation
32 of used mattresses to such a facility.

33 (15) As an alternative to the requirements of paragraph (14), a
34 requirement that the manufacturer provide a retailer with extra
35 vouchers to provide to a consumer if, when picking up a
36 consumer's mattress upon the purchase of a new mattress, the
37 mattress is infested with a pest or contaminated so that it poses a
38 contamination risk to personnel, new products, or equipment. These
39 vouchers shall be provided at no additional cost to the consumer,
40 retailer, recycling facility, or solid waste facility.

1 (16) Any other information deemed necessary by the department
2 related to compliance with the plan.

3 (c) The plan shall meet the portion of the used mattress recycling
4 goals, for which a manufacturer, individually or collectively,
5 submitting the plan, or by the manufacturers included in a plan
6 submitted by a stewardship organization, are subject to, pursuant
7 to the methodology specified in the plan pursuant to paragraph (6)
8 of subdivision (b):

9 (1) On and after January 1, 2015, recycle not less than 25 percent
10 of used mattresses generated by consumers in the state from the
11 manufacturers included in the plan.

12 (2) On and after January 1, 2017, recycle not less than 50 percent
13 of used mattresses generated by consumers in the state from the
14 manufacturers included in the plan.

15 (3) On and after January 1, 2020, recycle not less than 75 percent
16 of used mattresses generated by consumers in the state from the
17 manufacturers included in the plan.

18 (d) A manufacturer is deemed to meet the mattress recycling
19 percentile goal specified in subdivision (c) if the plan submitted
20 by the manufacturer, or by the stewardship organization formed
21 or joined by the manufacturer, when implemented, collects an
22 amount of mattresses equal to, or greater than, the equivalent
23 portion of the used mattresses available for collection, as
24 determined pursuant to paragraph (6) of subdivision (b) of the
25 plan.

26 (e) A manufacturer, individually or collectively, or stewardship
27 organization may coordinate with local governments, solid waste
28 facilities, retailers, and mattress recyclers to achieve the purposes
29 of this chapter.

30 (f) The plan shall not require the funding for the plan to be
31 collected from a consumer at the point of collection or discard.

32 42989. (a) The department shall review the plan submitted
33 pursuant to Section 42988 and within 90 days of receipt shall
34 approve, disapprove, or conditionally approve the plan.

35 (b) If the department disapproves the plan pursuant to
36 subdivision (a), the manufacturer or stewardship organization shall
37 resubmit the plan to the department. If the manufacturer or
38 stewardship organization does not resubmit a plan, or submits a
39 plan that is not approved or conditionally approved by the
40 department, the department shall remove all manufacturers covered

1 by the plan from the department's Internet Web site pursuant to
2 Section 42992, and a manufacturer so removed from the Internet
3 Web site shall not sell a mattresses in the state until the department
4 approves a plan for that manufacturer.

5 (c) The approved plan shall be a public record, except that
6 financial, production, or sales data reported to the department by
7 a manufacturer or the stewardship organization is not a public
8 record for purposes of the California Public Records Act (Chapter
9 3.5 (commencing with Section 6250) of Division 7 of Title 1 of
10 the Government Code) and shall not be open to public inspection.
11 The department may release financial, production, or sales data in
12 summary form only that cannot be attributable to a specific
13 manufacturer.

14 42990. (a) On and after July 1, 2014, a retailer shall offer a
15 consumer the option to have a used mattress picked up for recovery
16 at the time of delivery, at no additional cost to the consumer, if a
17 new mattress is delivered to the consumer.

18 (1) A retailer may contract out to a third-party entity for the
19 pickup of used mattresses.

20 (2) This chapter does not require a common carrier delivering
21 a new mattress to a consumer on behalf of a retailer to pick up a
22 used mattress for recovery.

23 (3) If a new mattress is delivered to a consumer by a common
24 carrier, the manufacturer shall provide the consumer the option of
25 having a used mattress picked up for recovery through a voucher
26 or another mechanism, at no additional cost to the consumer.

27 (b) This chapter does not prohibit a retailer from charging a
28 consumer an additional cost for the delivery of a new mattress.

29 42991. (a) On or before April 1, 2016, and each year thereafter,
30 a manufacturer shall, individually, collectively, or through a
31 stewardship organization, submit a report to the department
32 describing the mattress stewardship efforts taken pursuant to the
33 approved or conditionally approved plan, in the form and manner
34 that the department may prescribe.

35 (b) The department shall review the annual report required
36 pursuant this section and within 90 days of receipt shall adopt a
37 finding of compliance or noncompliance with this chapter.

38 (c) If the department adopts a finding of noncompliance pursuant
39 to subdivision (b), the department may require the manufacturer

1 or stewardship organization to amend and resubmit the plan within
2 90 days of the department’s determination.

3 (d) If the manufacturer or stewardship organization does not
4 resubmit the plan pursuant to subdivision (c), or the department
5 does not approve or conditionally approve the plan submitted to
6 subdivision (c), the department shall post a notice of
7 noncompliance pursuant to Section 42992 and the manufacturers
8 subject to the plan shall not sell a mattress in the state until the
9 department approves a plan.

10 (e) The department may adopt a uniform methodology that shall
11 be used by all manufacturers for purposes of estimating the amount
12 of mattresses sold in the state and the number of used mattresses
13 available for collection in the state, and for quantifying the number
14 of used mattresses collected and recycled in the state.

15 42992. (a) A manufacturer or retailer shall not sell or offer for
16 sale a mattress to any person in this state unless the manufacturer
17 is in compliance with this chapter.

18 (b) (1) On or after August 1, 2015, if a manufacturer is not
19 covered by an approved or conditionally approved plan, the
20 manufacturer shall not sell or offer for sale a mattress in the state.

21 (2) A manufacturer is a covered manufacturer if the
22 manufacturer has submitted a plan, either individually, collectively,
23 or through a stewardship organization, to the department pursuant
24 to Section 42988.

25 (c) (1) On August 1, 2015, or upon the date the plan is approved
26 or conditionally approved by the department, whichever date comes
27 first, and on or before July 1 annually thereafter, the department
28 shall post on its Internet Web site a list of manufacturers for which
29 the department has approved or conditionally approved the plan
30 pursuant to Section 42989.

31 (2) On July 1, 2016, and annually thereafter, the department
32 shall post on its Internet Web site a list of manufacturers for which
33 the department has adopted a finding of compliance with regard
34 to the report filed pursuant to subdivision (b) of Section 42991.

35 (3) A manufacturer that is not listed on the department’s Internet
36 Web site pursuant to this section, but demonstrates to the
37 satisfaction of the department that it is in compliance with this
38 chapter before the next notice is required to be posted pursuant to
39 this section, may request a certification letter from the department
40 stating that the manufacturer is in compliance. The manufacturer

1 that receives that letter shall be deemed to be in compliance with
2 this chapter.

3 (4) A retailer that distributes or sells a mattress shall monitor
4 the department's Internet Web site to determine if a manufacturer
5 is a covered manufacturer or is in compliance with this chapter.
6 A retailer otherwise in compliance with this chapter shall be
7 deemed in compliance with subdivision (a) if, on the date the
8 retailer ordered or purchased a mattress, or within five calendar
9 days after that date, the manufacturer was listed as covered or
10 compliant on the department's Internet Web site.

11 (5) A retailer may exhaust existing stock in its inventory through
12 sales to the public if the existing stock was purchased when the
13 manufacturer was in compliance with the requirements of this
14 chapter at the time of the existing stock's initial purchase.

15 (d) If the department determines that a manufacturer or
16 stewardship organization is not in compliance with this chapter,
17 the department shall remove the manufacturer or the manufacturers
18 covered by the plan submitted by the stewardship organization
19 from the department's Internet Web site pursuant to this section
20 and the manufacturer shall not sell a mattresses in the state until
21 the department determines that the manufacturer is in compliance
22 with this chapter.

23 42993. (a) On or before April 1, 2016, and each year thereafter,
24 a person that is engaged in business as a recycler shall submit a
25 report to the department that includes, but is not limited to, both
26 of the following:

27 (1) Quantitative information on the number of mattresses
28 received and recycled or renovated in the state during the preceding
29 calendar year.

30 (2) Quantitative information on the number of vouchers received
31 from customers in the state in the preceding calendar year, if
32 applicable.

33 (b) On or before April 1, 2016, and each year thereafter, a person
34 who renovates used mattresses shall submit a report to the
35 department, that at a minimum, includes both of the following:

36 (1) Quantitative information on the number of mattresses
37 received and recycled or renovated in California during the
38 preceding calendar year.

1 (2) Quantitative information on the number of vouchers received
2 from customers in California in the preceding calendar year, if
3 applicable.

4 (c) For purposes of determining the recycling rate for a used
5 mattress, on or before April 1, 2016, and each year thereafter, a
6 solid waste landfill facility operator shall report to the department,
7 in a form and manner determined by the department, regarding
8 the number of used mattresses received and designated for
9 recycling or renovation within the state in the preceding calendar
10 year.

11 42994. (a) A manufacturer and a mattress stewardship
12 organization shall do all of the following:

13 (1) Upon request, provide the department with reasonable and
14 timely access, as determined by the department and as authorized
15 pursuant to Title 13 (commencing with Section 1822.50) of Part
16 3 of the Code of Civil Procedure, to its facilities and operations,
17 as necessary to determine compliance with this chapter.

18 (2) Upon request, provide the department with relevant records
19 necessary to determine compliance with this chapter.

20 (3) If a manufacturer or the stewardship organization does not
21 comply with the department's request made pursuant to paragraph
22 (1) or (2), it shall provide the department with a complete
23 explanation for its inability or decision not to comply with that
24 request.

25 (b) The records required by this chapter shall be maintained and
26 accessible for three years. All reports and records provided to the
27 department pursuant to this chapter shall be provided under penalty
28 of perjury.

29 (c) The department may take disciplinary action against a
30 manufacturer if the stewardship organization or manufacturer fails
31 to provide the department with the access required pursuant to this
32 section, including, but not limited to, imposing penalties pursuant
33 to Section 42996 and posting an immediate notice on the
34 department's Internet Web site pursuant to Section 42292 that the
35 manufacturer is no longer in compliance with this chapter.

36 42995. (a) The department may require a manufacturer to pay
37 the department a quarterly administrative fee, as determined by
38 the department.

39 (b) If the department elects to impose an administrative fee, the
40 amount of the administrative fees imposed pursuant to subdivision

1 (a) shall be established by the department in an amount that is
2 sufficient to meet, but that does not exceed, the department's full
3 costs of administering and enforcing this chapter, including any
4 program development costs or regulatory costs incurred by the
5 department prior to the submittal of the plan required by Section
6 42988.

7 (c) The administrative fees collected pursuant to this section
8 shall be deposited into the Mattress Recovery and Recycling
9 Account, which is hereby established in the Integrated Waste
10 Management Fund. Upon appropriation by the Legislature, moneys
11 in the account shall be expended by the department to administer
12 and enforce this chapter. The fees collected pursuant to this section
13 shall not be expended for any other purpose.

14 42996. (a) The department may impose an administrative civil
15 penalty on any manufacturer or stewardship organization that is
16 in violation of this chapter. The amount of the civil penalty shall
17 not exceed five hundred dollars (\$500) per day, but if the violation
18 is intentional, knowing, or reckless, the department may impose
19 a civil penalty of not more than five thousand dollars (\$5,000) per
20 day.

21 (b) The department may impose an administrative civil penalty
22 on any retailer who is in violation of this chapter. The amount of
23 the civil penalty shall not exceed five hundred dollars (\$500) per
24 day, but if the violation is intentional, knowing, or reckless the
25 department may impose a civil penalty of not more than five
26 thousand dollars (\$5,000) per day.

27 (c) In assessing or reviewing the amount of a civil penalty
28 imposed pursuant to subdivision (a) or (b) for a violation of this
29 chapter, the department or the court shall consider all of the
30 following:

- 31 (1) The nature and extent of the violation.
- 32 (2) The number and severity of the violation or violations.
- 33 (3) The economic effect of the penalty on the violator.
- 34 (4) Whether the violator took good faith measures to comply
35 with this chapter and the period of time over which these measures
36 were taken.
- 37 (5) The willfulness of the violator's misconduct.
- 38 (6) The deterrent effect that the imposition of the penalty would
39 have on both the violator and the regulated community.
- 40 (7) Any other factor that justice may require.

1 (d) If more than one stewardship organization submits a plan
2 pursuant to this chapter, the department shall determine the
3 manufacturer's or retailer's compliance with this chapter in
4 accordance with the plan to which the manufacturer or retailer is
5 subject.

6 (e) The department may impose the administrative civil penalties
7 pursuant to this section in accordance with Chapter 5 (commencing
8 with Section 11500) of Part 1 of Division 3 of Title 2 of the
9 Government Code, except that subdivision (c) of Section 11505
10 of the Government Code shall not apply to the department.

11 (f) The department shall not impose a penalty upon a mattress
12 stewardship organization pursuant to this section for a failure to
13 comply with this chapter as a result of submitting false or
14 misleading information if the stewardship organization
15 demonstrates that it received false or misleading information from
16 a manufacturer that was the direct cause of its failure to comply
17 with this chapter.

18 (g) The department shall deposit all penalties collected pursuant
19 to this section into the Mattress Recovery and Recycling Penalty
20 Account, which is hereby created in the Integrated Waste
21 Management Fund. Upon appropriation by the Legislature, moneys
22 deposited into the Mattress Recovery and Recycling Penalty
23 Account may be expended by the department to implement this
24 chapter.

25 42997. Upon a finding that a manufacturer or stewardship
26 organization has not met a requirement of this chapter, in addition
27 to any other penalties authorized under this chapter, the department
28 may take any of following actions to ensure compliance with the
29 requirements of this chapter:

30 (a) Revoke the manufacturer's or stewardship organization's
31 plan approval, amend an approval or conditional approval to
32 include new conditions, or require the manufacturer or stewardship
33 organization to resubmit the plan.

34 (b) Remove the manufacturer from the department's Internet
35 Web site and list of compliant manufacturers, as specified in
36 subdivision (d) of Section 42992.

37 (c) As a condition for approval of plans submitted by the
38 manufacturer or stewardship organization pursuant to Section
39 42989 after the date of the department's finding, require additional

1 reporting not otherwise required under this chapter, at a frequency
2 determined by the department.

3 42998. (a) Except as provided in subdivision (c), an action
4 specified in subdivision (b) that is taken by a stewardship
5 organization or its members is not a violation of the Cartwright
6 Act (Chapter 2 (commencing with Section 16700) of Part 2 of
7 Division 7 of the Business and Professions Code), the Unfair
8 Practices Act (Chapter 4 (commencing with Section 17000) of
9 Part 2 of Division 7 of the Business and Professions Code), or the
10 Unfair Competition Law (Chapter 5 (commencing with Section
11 17200) of Part 2 of Division 7 of the Business and Professions
12 Code).

13 (b) Subdivision (a) shall apply to all of the following actions
14 taken by the stewardship organization or a manufacturer:

15 (1) The creation, implementation, or management of an interim
16 plan provided to the department pursuant to Section 42987 or of
17 a plan approved by the department pursuant to Section 42989 and
18 the types or quantities of used mattresses recycled or otherwise
19 managed pursuant to the plan, as described in Section 42988.

20 (2) The cost and structure of an approved plan.

21 (3) The establishment, administration, or disbursement of the
22 costs associated with funding the implementation of this chapter.

23 (c) Subdivision (a) does not apply to an agreement that does
24 any of the following:

25 (1) Fixes a price of or for mattresses, except for an agreement
26 related to costs associated with participation in a plan approved
27 or conditionally approved by the department and otherwise in
28 accordance with this chapter.

29 (2) Fixes the output of production of mattresses.

30 (3) Restricts the geographic area in which, or customers to
31 whom, mattresses will be sold.

32 SEC. 2. No reimbursement is required by this act pursuant to
33 Section 6 of Article XIII B of the California Constitution because
34 the only costs that may be incurred by a local agency or school
35 district will be incurred because this act creates a new crime or
36 infraction, eliminates a crime or infraction, or changes the penalty
37 for a crime or infraction, within the meaning of Section 17556 of
38 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

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