

AMENDED IN SENATE MAY 28, 2013

AMENDED IN SENATE APRIL 15, 2013

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 254

Introduced by Senators Hancock and Correa
(Principal coauthor: Senator Calderon)
(Coauthor: Senator Corbett)

February 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 amended, Hancock. Solid waste: used mattresses: recycling and recovery.

Existing law requires a retailer of various specified products, such as rechargeable batteries and cellular telephones, 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. The bill would authorize a qualified industry association, as defined, to establish a mattress recycling organization, as defined, and be certified by the Department of Resources Recycling and Recovery to develop, implement, and administer a mattress recycling program on or before July 1, 2014. The bill would require manufacturers and retailers of mattresses to register with the mattress recycling organization on or before January 1, 2015.

This bill would prohibit, on and after January 1, 2015, the manufacturer or retailer from, among other things, manufacturing or

selling a mattress in this state under circumstances of noncompliance with the bill's requirements. The act would require the retailer, by July 1, 2014, to give a consumer the option to have a used mattress picked up, at no additional cost, at the time a new mattress is delivered *or be provided with an opportunity for free drop off of the used mattress.*

This bill would require the mattress recycling organization, by April 1, 2015, to develop a state plan for recycling used mattresses in the state that includes specified goals and elements and to submit the plan to the department, as specified. *The plan would be required to include, among other things, providing a mechanism to local governments and solid waste facilities to recover illegally disposed mattresses that is funded, as specified, and reimbursing solid waste facilities for certain costs.* The bill would require the organization, by July 1, 2015, to annually prepare and approve a proposed program plan budget for the next calendar year and to submit the approved budget to the department, as specified. The bill would require the department 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 *direct* 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.

This 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 and remit the charge collected to the organization. ~~The 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.~~

This bill would authorize the department to impose an administrative civil penalty on a manufacturer or retailer who sells a mattress in violation of the act. The bill would require the department 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 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 2/3 of the membership of each house of the Legislature.

Vote: 2/3. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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. The Legislature finds and declares both of the following:
8 (a) In order to reduce illegal dumping, increase recycling, and
9 substantially reduce public agency costs for the end-of-life
10 management of used mattresses, the Used Mattress Recovery and
11 Recycling Act is hereby established by this chapter to require
12 manufacturers~~and retailers~~ of mattresses sold in this state to
13 develop, finance, and implement a convenient and cost-effective
14 program to recover and recycle used mattresses generated in this
15 state.

16 (b) ~~Consistent with existing state policy, the~~*The* program
17 developed and implemented by manufacturers~~and retailers~~ of
18 mattresses sold in this state shall strive for the maximum feasible
19 level of recovery and recycling of used mattresses generated in
20 support of the statewide goal that at least 75 percent of all solid
21 waste be recycled by January 1, 2020.

22 42985.1. This chapter shall be known, and may be cited, as the
23 Used Mattress Recovery and Recycling Act.
24

25 Article 1. Definitions
26

27 42986. (a) (1) “Consumer” means an owner of a mattress,
28 including a person, business, corporation, limited partnership,

1 nonprofit organization, or governmental entity, and including the
2 ultimate purchaser, owner, or lessee of a mattress.

3 (2) “Consumer” does not include a government organization or
4 other party that obtains one or more used mattresses in the course
5 of collecting used mattresses for recycling for purposes of this
6 chapter, or through the ordinary collection and handling of
7 municipal solid waste.

8 (b) “Distributor” means a company that has a contractual
9 relationship with one or more manufacturers to market and sell
10 mattresses to retailers.

11 (c) “Foundation” means a ticking-covered structure used to
12 support a mattress or sleep surface. The structure may include
13 constructed frames, foam, box springs, or other materials, used
14 alone or in combination.

15 (d) “Importer” means a party qualifying as an “importer of
16 record” for purposes of Section 1484(a)(2)(B) of Title 19 of the
17 United States Code, with regard to the import of a finished mattress
18 sold in the state that was manufactured or assembled by a company
19 outside the United States.

20 (e) (1) “Manufacturer” means any of the following:

21 ~~(1)~~

22 (A) The person who manufactures the covered product and who
23 sells, offers for sale, or distributes that product in the state.

24 ~~(2)~~

25 (B) If there is no person who is a manufacturer of the product
26 for purposes of ~~paragraph (1)~~ *subparagraph (A)*, the manufacturer
27 of the covered product is the person who imports the product into
28 the state for sale or distribution.

29 ~~(3)~~

30 (2) A manufacturer ~~includes~~ *may include* a renovator.

31 (3) *A retailer that brings a mattress into its store locations from
32 an out-of-state warehouse or distribution center is not a
33 manufacturer.*

34 (f) (1) “Mattress” means a resilient material or combination of
35 materials that is enclosed by a ticking, is used alone or in
36 combination with other products, and is intended for or promoted
37 for sleeping upon.

38 (2) “Mattress” includes a foundation and a renovated mattress
39 or renovated foundation.

40 (3) “Mattress” does not include the following:

- 1 (A) An unattached mattress pad or unattached mattress topper,
2 including items with resilient filling, with or without ticking,
3 intended to be used with or on top of a mattress.
- 4 (B) A sleeping bag or pillow.
- 5 (C) A car bed, crib, or bassinet mattress.
- 6 (D) Juvenile products, including a carriage, basket, dressing
7 table, stroller, playpen, infant carrier, lounge pad, or crib bumper,
8 and the pads for those juvenile products.
- 9 (E) A product containing liquid- and gaseous-filled ticking,
10 including a water bed and air mattress that does not contain
11 upholstery material between the ticking and the mattress core.
- 12 (F) Upholstered furniture that does not otherwise contain a
13 detachable mattress *or that is a fold out sofa bed or futon*.
- 14 (g) “Mattress recycling organization” or “organization” means
15 an organization exempt from taxation under Section 501(c)(3) or
16 Section 501(c)(6) of the Internal Revenue Code of 1986, that is
17 established by a qualified industry association, composed of
18 manufacturers and retailers, and certified pursuant to Section
19 42987, to develop, implement, and administer the mattress
20 recycling program established pursuant to this chapter.
- 21 (h) “Used mattress recovery and recycling plan” or “plan” means
22 the plan for recycling used mattresses that is developed by the
23 mattress recycling organization pursuant to this chapter.
- 24 (i) “Program” or “used mattress recycling program” means the
25 program implemented by the mattress recycling organization
26 pursuant to a plan approved by the department.
- 27 (j) “Qualified industry ~~organization~~ *association*” means the
28 International Sleep Products Association, a successor of that
29 organization, or a group of mattress manufacturers that collectively
30 represent at least 35 percent of the volume of mattresses
31 manufactured in the United States.
- 32 (k) “Recycle” or “recycling” has the same meaning as defined
33 in Section 40180.
- 34 (l) “Recycler” means a person that engages in the manual or
35 mechanical separation of mattresses to substantially recover
36 components and commodities contained in mattresses for the
37 purpose of reuse or recycling.
- 38 (m) “Recycling charge” or “charge” means the charge imposed
39 on the sale of a new or renovated mattress at the point of sale and

1 collected by the organization to fund the recycling of used
2 mattresses pursuant to this chapter.

3 (n) (1) “Renovate” or “renovation” means altering a used
4 mattress for the purpose of resale and includes one or more of the
5 following:

6 (A) Replacing the mattress, ticking, or filling.

7 (B) Adding additional filling.

8 (C) Rebuilding a used mattress.

9 (D) Replacing components with new or postconsumer materials
10 unless the material is a clean recycled material, consists of used
11 electronic parts or controls, or is a used mattress base that is not
12 covered by ticking.

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

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

17 (B) Sterilizing or sanitizing a mattress without otherwise altering
18 the mattress.

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

21 (D) Refurbishing that disqualifies a mattress for a yellow
22 wholesale renovator tag to be affixed to the mattress, in accordance
23 with the regulations adopted by the Department of Consumer
24 Affairs.

25 (o) “Renovator” means a person who renovates used mattresses.

26 (p) “Retailer” means a person who sells mattresses in the state
27 or offers to a consumer a mattress in the state through any means,
28 including, but not limited to, by remote offering, including sales
29 outlets or catalogs, electronically through the Internet, by
30 telephone, or through the mail.

31 (q) “Sale” or “sell” means the transfer of title of a mattress for
32 consideration, including by a manufacturer, a distributor, or a
33 retailer for eventual consumption to a consumer in the state,
34 including remote sales conducted through sales outlets, catalogs,
35 or the Internet or any other similar electronic means. For purposes
36 of this chapter, a long-term lease of not less than 12 months is the
37 same as a sale.

38 (r) (1) “Ticking” means the outermost layer of fabric or related
39 material of a mattress.

1 (2) “Ticking” does not include another layer of fabric or related
2 material that is quilted together with, or otherwise attached to, the
3 outermost layer of fabric or related material.

4 (s) “Used mattress” means a mattress that has been discarded
5 by a consumer.

6
7 Article 2. Mattress Recycling Plan
8

9 42987. (a) (1) On or before July 1, 2014, a qualified industry
10 association or a successor organization may establish a mattress
11 recycling organization for purposes of this chapter, which shall be
12 composed of manufacturers and retailers and be certified pursuant
13 to this section to develop, implement, and administer the mattress
14 recycling program established pursuant to this chapter.

15 (2) Within 60 days of receipt of a request for certification, the
16 department shall notify the requesting qualified industry association
17 of the department’s decision whether or not to certify that
18 ~~association~~ *mattress recycling organization*.

19 (b) On or before January 1, 2015, each manufacturer and retailer
20 shall register with the mattress recycling organization.

21 (c) On and after January 1, 2015, a retailer shall not sell,
22 distribute, or offer for sale a mattress in the state unless the retailer
23 is in compliance with this chapter and the manufacturer of the
24 mattress sold by the retailer is listed in compliance with this
25 chapter.

26 (d) On and after January 1, 2015, a manufacturer shall not
27 manufacture, assemble, or import a new mattress in this state, or
28 sell or distribute a mattress to a distributor or retailer, unless the
29 manufacturer is in compliance with this chapter.

30 42987.1. On or before April 1, 2015, the mattress recycling
31 organization shall develop and submit to the department a plan for
32 recycling used mattresses in the state *in an economically efficient*
33 *and practical manner* that includes all of the following goals and
34 elements:

35 (a) Program objectives consistent with the state’s solid waste
36 management hierarchy.

37 (b) The names of manufacturers and brands covered under the
38 plan.

39 (c) A consultation process with affected stakeholders.

- 1 (d) Methods to increase the number of used mattresses diverted
2 from landfills, reduce the number of illegally dumped used
3 mattresses, and increase the quantity of used materials recovered
4 through this process and recycled for other uses.
- 5 (e) (1) The establishment and administration of a means for
6 funding the plan in a manner that distributes the mattress recycling
7 organization's costs uniformly over all mattresses sold in the state.
- 8 (2) The funding mechanism shall provide sufficient funding for
9 the mattress recycling organization to carry out the plan, including
10 the administrative, operational, and capital costs of the plan.
- 11 (f) The publishing of an annual report for each calendar year of
12 operation.
- 13 (g) Conducting research, as needed, related to improving used
14 mattress collection, dismantling, and recycling operations,
15 including pilot programs to test new processes, methods, or
16 equipment on a local, regional, or otherwise limited basis.
- 17 (h) Establishing a methodology for the purpose of determining
18 the state mattress recycling goal.
- 19 (i) A program performance measurement that shall collect
20 program data for the purpose of the annual report. The information
21 shall include:
- 22 (1) A methodology for estimating the amount of mattresses sold
23 in the state, used mattresses available for collection in the state,
24 and for quantifying the number of used mattresses collected and
25 recycled in the state.
- 26 (2) A methodology for determining mattresses sold in the state
27 by the manufacturers of the mattress recycling organization.
- 28 (j) Coordinating activities with existing used product collecting
29 and recycling plans for discarded mattresses or other products, and
30 other relevant parties as appropriate, to provide efficient delivery
31 of services and avoid unnecessary duplication of effort and
32 expense.
- 33 (k) Entering into contracts or agreements that are necessary and
34 proper for the mattress recycling organization to carry out these
35 duties consistent with the terms of this chapter.
- 36 (l) Establishment of a financial incentive to encourage parties
37 to collect for recycling used mattresses discarded or illegally
38 dumped in the state.
- 39 ~~(m) Ensuring local governments and solid waste facilities are~~
40 ~~provided with a mechanism for the recovery of illegally dumped~~

1 ~~used mattresses at no additional cost to the local government or~~
2 ~~solid waste facility.~~

3 ~~(n) Policies to ensure there are adequate and convenient~~
4 ~~opportunities for the collection, acceptance, and recovery for~~
5 ~~recycling used mattresses in low-income communities, in~~
6 ~~accordance with the poverty line annually established by the~~
7 ~~Secretary of California Health and Human Services pursuant to~~
8 ~~the federal Omnibus Budget Reconciliation Act of 1981 (Public~~
9 ~~Law 97-35), as amended.~~

10 ~~(o) Ensuring used mattresses recovered by a retailer are~~
11 ~~delivered to a recycling facility or solid waste facility for recycling.~~

12 ~~(p) Providing outreach efforts and education to consumers,~~
13 ~~manufacturers, and retailers, for the purpose of promoting the~~
14 ~~recycling of used mattresses.~~

15 ~~(q) Procedures to ensure implementation of the plan if a~~
16 ~~manufacturer or the mattress recycling organization no longer~~
17 ~~exists due to bankruptcy, dissolution, or similar processes.~~

18 ~~(r) (1) Ensuring solid waste facilities offer individuals free~~
19 ~~drop-off of used mattresses.~~

20 ~~(2) Reimbursement of solid waste facilities for the reasonable~~
21 ~~costs incurred of collecting, storing, and processing used mattresses~~
22 ~~in paragraph (1).~~

23 ~~(s) Any information deemed necessary by the department related~~
24 ~~to compliance with the plan.~~

25 *(m) Ensuring, to the maximum extent possible, that local*
26 *governments and solid waste facilities are provided with a*
27 *mechanism for the recovery of illegally disposed used mattress*
28 *that is funded at no additional cost to the local government or*
29 *solid waste facility.*

30 *(n) Developing processes to collect used mattresses from*
31 *low-income communities for recycling in accordance with the*
32 *poverty line annually established by the Secretary of California*
33 *Health and Human Services pursuant to the federal Omnibus*
34 *Budget Reconciliation Act of 1981 (Public Law 97-35), as*
35 *amended.*

36 *(o) Requiring used mattresses collected by a retailer to be*
37 *delivered to a recycling facility or solid waste facility for recycling.*

38 *(p) Providing outreach efforts and education to consumers,*
39 *manufacturers, and retailers, for the purpose of promoting the*
40 *recycling of used mattresses.*

1 (q) (1) Ensuring, to the maximum extent possible, that solid
2 waste facilities offer individuals the free drop off of used
3 mattresses.

4 (2) Reimbursing solid waste facilities for the reasonable costs
5 incurred in collecting, storing, and processing used mattresses in
6 accordance with paragraph (1).

7 (r) Other information requested by the department that is
8 reasonably related to compliance with the recycling plan and that
9 the organization can readily compile.

10 42987.2. In preparing the plan pursuant to Section 42987.1,
11 the mattress recycling organization shall consult with interested
12 stakeholders.

13 42987.3. (a) The department shall review the plan for
14 consistency with this chapter and shall approve, disapprove, or
15 conditionally approve the plan within 90 days of receipt of the
16 plan. *If the department fails to act within 90 days of the receipt of*
17 *the plan, the plan shall be deemed approved.*

18 (b) If the department disapproves the plan pursuant to
19 subdivision (a), *the department shall explain, in writing, how the*
20 *plan is inconsistent with this chapter, and the mattress recycling*
21 *organization shall resubmit a plan to the department. If the mattress*
22 *recycling organization does not resubmit a plan, or submits a plan*
23 *that is not approved or conditionally approved by the department,*
24 *the mattress recycling organization shall be deemed not in*
25 *compliance with this chapter. department finds that the plan*
26 *resubmitted by the organization is inconsistent with the*
27 *requirements of this chapter, the mattress recycling organization*
28 *shall not be deemed in compliance with this chapter until the*
29 *organization submits a plan that the department finds is consistent*
30 *with the requirements of this chapter.*

31 (c) The approved plan shall be a public record, except that
32 financial, production, or sales data reported to the department by
33 the mattress recycling organization is not public record for purposes
34 of the California Public Records Act (Chapter 3.5 (commencing
35 with Section 6250) of Division 7 of Title 1 of the Government
36 Code) and shall not be open to public inspection. The department
37 may release financial, production, or sales data in summary form
38 only so the information cannot be attributable to a specific
39 manufacturer or retailer *or to any other entity.*

1 42987.4. Within ~~30~~ 60 days after approval or conditional
2 approval by the department, the mattress recycling organization
3 shall implement the approved plan.

4 42987.5. (a) On or before January 1, 2017, based on
5 methodology contained in the plan and information contained in
6 the first annual report, the department, *in consultation with the*
7 *organization, and after taking into consideration relevant economic*
8 *and practical considerations and other information*, shall establish
9 and make public the following:

10 (1) The state mattress recycling baseline amount.

11 (2) The state mattress recycling goals.

12 (b) On or before July 1, 2020, and every four years thereafter,
13 the department shall review, including reviewing for consistency
14 with Section 41780.01, and update as necessary, the baseline
15 amount and goals to ensure that the program advances the statewide
16 recycling goal.

17
18 Article 3. Budget

19
20 42988. On or before July 1, 2015, and on or before July 1
21 annually thereafter, the mattress recycling organization shall
22 prepare and submit to the department a proposed used mattress
23 recycling program budget for the following calendar year that
24 includes all of the following:

25 (a) Anticipated revenues and costs of implementing the program,
26 including related programs, projects, contracts, and administrative
27 expenses.

28 (b) A recommended funding level sufficient to cover the plan's
29 costs and to operate the mattress recycling program over a
30 multiyear period in a prudent and responsible manner.

31 (c) The amount of the mattress recycling charge and itemization
32 of costs that each charge covers.

33 42988.1. (a) On or before September 1, 2015, and annually
34 thereafter, the department shall approve, disapprove, or
35 conditionally approve a final program budget. *If the department*
36 *fails to act or does not disapprove or conditionally approve a final*
37 *program budget, the budget shall be deemed approved.*

38 (b) (1) If the department disapproves the budget, the mattress
39 recycling organization shall resubmit a revised budget addressing

1 the department's *written* reasons for its decision within 30 days
2 of the disapproval.

3 (2) The department, within 30 days from the date the mattress
4 recycling organization resubmits a revised budget, shall approve,
5 disapprove, or conditionally approve a final program budget. *If*
6 *the department fails to act or does not disapprove or conditionally*
7 *approve a final program budget within those 30 days, the budget*
8 *shall be deemed approved.*

9 42988.2. (a) The department shall notify the mattress recycling
10 organization of the department's costs ~~in~~ *that are directly related*
11 *to implementing this chapter relating to the mattress recycling*
12 *organization's activities pursuant to this chapter, including any*
13 *costs incurred in certifying the mattress recycling organization*
14 *and reviewing the organization's plan submitted pursuant to*
15 *Section 42987.1.*

16 (b) On or before July 1, 2015, and once every three months
17 thereafter, and within the fiscal year, the mattress recycling
18 organization shall reimburse the department for costs the
19 department incurs *that are directly related* to the mattress recycling
20 organization's activities pursuant to this chapter.

21 (c) The department shall deposit all moneys submitted for
22 reimbursement costs by the mattress recycling organization
23 pursuant to this section into the Used Mattress Recycling Account,
24 which is hereby established in the Integrated Waste Management
25 Fund. Upon appropriation by the Legislature, moneys in the
26 account shall be expended by the department to administer and
27 enforce this chapter. The funds collected pursuant to this section
28 shall not be expended for any other purpose.

29

30 Article 4. Mattress Recycling Charge

31

32 42989. (a) The mattress recycling organization shall set the
33 amount of the mattress recycling charge that shall be added to the
34 purchase price of a mattress at the point of sale and include the
35 charge amount in the annual budget.

36 (b) (1) The amount of the state mattress recycling charge shall
37 be sufficient to fund the revenue requirements set forth in the
38 approved budget.

39 (2) *The mattress recycling organization shall set the charge as*
40 *a flat rate and not as a percentage of the purchase price. The*

1 organization shall not set more than two different charges to
2 accommodate mattress size differentials.

3 ~~(e) Changes in the charges shall be made public by the mattress
4 recycling organization 60 days before taking effect.~~

5 (c) (1) In the first 12 months during which the mattress
6 recycling charge is collected, the mattress recycling organization
7 may change the amount of the mattress recycling charge, in
8 accordance with subdivision (b), and shall provide no less than
9 90 days' notice to the public before the change in the amount of
10 the charge takes place.

11 (2) After one year from the date when the collection of the
12 mattress recycling charge commences, the mattress recycling
13 organization may change the amount of the charge in accordance
14 with subdivision (b), but the mattress recycling organization shall
15 not change the amount of the charge more frequently than
16 annually, and shall provide no less than 180 days' notice to the
17 public before the change in the amount of the charge takes effect.

18 (d) The charge shall be included in the annual program budget
19 for approval by the department.

20 42989.1. (a) Each manufacturer, retailer, or distributor that
21 sells a mattress to a consumer or to the ultimate end user of the
22 mattress in the state shall add the charge to the purchase price of
23 the mattress and shall remit the charge collected to the mattress
24 recycling organization.

25 (b) In each transaction described in subdivision (a), the charge
26 shall be clearly visible on the invoice, *receipt*, or functionally
27 equivalent billing document provided by the seller to the consumer
28 as a separate line item.

29 (c) The mattress recycling organization shall develop
30 reimbursement criteria to enable retailers to recover administrative
31 costs associated with collecting the charge.

32 (d) The mattress recycling organization shall determine the rules
33 and procedures that are necessary and proper to implement the
34 collection of the charge in a fair, efficient, and lawful manner.

35 42989.2. (a) The mattress recycling organization may conduct
36 an audit of those parties that are required to remit the charge to
37 the mattress recycling organization to verify that the charges paid
38 are proper and accurate and to ensure all parties required by this
39 chapter to pay or collect the charge are paying or collecting the
40 proper amount.

1 (b) An audit conducted pursuant to this section shall be carried
 2 out in accordance with generally accepted auditing practices and
 3 shall be limited in scope to confirming whether the charge has
 4 been properly collected on all sales of mattresses to consumers in
 5 the state.

6 (c) For purposes of conducting audits pursuant to this section,
 7 the mattress recycling organization shall hire independent
 8 third-party auditors that are approved by the department.

9 (d) If the mattress recycling organization conducts an audit
 10 pursuant to this section, the organization shall provide a copy of
 11 the audit to the department upon request by the department.

12 42989.3. (a) The mattress recycling organization shall deposit
 13 the charges and other moneys collected by the mattress recycling
 14 organization pursuant to this chapter in accounts that are
 15 maintained and disbursed by the organization.

16 (b) The mattress recycling organization may enter into a joint
 17 venture, agreements, or contracts with third parties, including, but
 18 not limited to, corporations, partnerships, nonprofit entities, and
 19 governmental agencies, to undertake activities on the mattress
 20 recycling organization's behalf that are consistent with this chapter.

21
 22 Article 5. Records, Audits, and Annual Report

23
 24 42990. (a) The mattress recycling organization shall keep
 25 minutes, books, and records that clearly reflect the activities and
 26 transactions of the mattress recycling organization.

27 (b) The books of the mattress recycling organization shall be
 28 audited at the organization's expense by a certified public
 29 accountant retained by the organization ~~and approved by the~~
 30 ~~department~~ at least once each calendar year.

31 (c) The mattress recycling organization shall arrange for the
 32 audit to be delivered to the department. The department shall
 33 review the audit for compliance with this chapter and consistency
 34 with the plan created pursuant to this chapter. The department shall
 35 notify the mattress recycling organization of any compliance issues
 36 or inconsistencies. The mattress recycling organization may obtain
 37 copies of the audit upon request. The department shall not disclose
 38 any confidential proprietary information in the audit.

39 42990.1. On or before April 1, 2016, and each year thereafter,
 40 the mattress recycling organization shall submit to the department

1 and make publicly available on its Internet Web site a report that
2 includes, for the preceding calendar year, all of the following:

- 3 (a) The mattress recycling organization’s costs and revenues.
- 4 (b) The quantity of mattresses disposed of in solid waste
5 landfills, which shall be provided by the department to interested
6 parties.
- 7 (c) The quantity of discarded used mattresses collected for
8 recycling in the program.
- 9 (d) The quantity of used mattresses collected for recycling from
10 different categories of sources.
- 11 (e) The quantity of each category of materials recycled.
- 12 (f) The uses for the recycled materials.
- 13 (g) The quantity of otherwise disposed of materials.
- 14 (h) A description of methods used to collect, transport, and
15 process waste mattresses in this state.
- 16 (i) Examples of educational materials that were provided to
17 consumers the first year and any changes to those materials in
18 subsequent years.
- 19 (j) The total volume, number, and weight of used mattresses
20 collected recycled, renovated, and reused in this state during the
21 preceding calendar year, including any conversion factor used to
22 determine the number of mattresses recovered.
- 23 (k) Other information relevant to compliance with the plan.

24
25 Article 6. Mattress Recycling and Renovating

26
27 42991. (a) On or before April 1, 2016, and annually thereafter,
28 a person that is engaged in business as a recycler or renovator shall
29 submit a report to the department that includes the following:

30 (1) Quantitative information on the number of mattresses
31 received and recycled or renovated in the state during the preceding
32 calendar year.

33 (2) ~~Any~~ *Other* information deemed necessary by the department
34 *that is reasonably* related to compliance with this chapter *and that*
35 *can be readily compiled.*

36 (b) For purposes of determining the *used mattress* recycling
37 rate ~~for a used mattress~~, on or before April 1, 2016, and annually
38 thereafter, a solid waste landfill facility operator shall report to the
39 department, in a form and manner determined by the department,
40 regarding the number of used mattresses received ~~and designated~~

1 ~~for recycling or renovation~~ *by that facility that were recycled or*
2 *renovated* within the state in the preceding calendar year.

3

4 Article 7. Retailer Used Mattress Take-back

5

6 42992. ~~On~~ *(a) Except as provided in subdivision (d), on and*
7 *after July 1, 2014, a retailer shall offer a consumer the option to*
8 *have a used mattress picked up for recovery at the time of delivery,*
9 *at no additional cost to the consumer, if a new mattress is delivered*
10 *to the consumer.*

11 *(b) A retailer may contract out to a third party for the delivery*
12 *of a new mattress or pick up of a used mattress.*

13 *(c) A retailer is not prohibited from charging the consumer for*
14 *the cost of the delivery of a new mattress.*

15 *(d) (1) A retailer or third-party contractor delivering a new*
16 *mattress may refuse to pick up a used mattress from a consumer*
17 *if the retailer or contractor determines the used mattress is*
18 *contaminated and poses a risk to personnel, new products, or*
19 *equipment.*

20 *(2) If the retailer or third party takes the action specified in*
21 *paragraph (1), the retailer or third-party contractor shall provide*
22 *the consumer with an opportunity for the free drop off of the used*
23 *mattress in the manner specified in paragraph (q) of Section*
24 *42987.1.*

25 *(e) A common carrier delivering a new mattress to a consumer*
26 *as a result of an online purchase is not required to pick up a used*
27 *mattress for recovery.*

28

29 Article 8. Enforcement

30

31 42993. (a) On or before July 1, 2016, and annually thereafter,
32 the department shall post on its Internet Web site a list of
33 manufacturers and retailers that are in compliance with this chapter.

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

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

3 (c) A retailer that distributes or sells a mattress shall monitor
4 the department's Internet Web site to determine if a manufacturer
5 is in compliance with this chapter. A retailer otherwise in
6 compliance with this chapter shall be deemed in compliance with
7 the chapter if, on the date the retailer ordered or purchased a
8 mattress, or within ~~seven~~ 30 calendar days before or after that date,
9 the manufacturer was listed as covered or compliant on the
10 department's Internet Web site.

11 (d) *A retailer may sell or distribute the existing stock of its*
12 *inventory through sales to the public if the existing stock was*
13 *purchased when the manufacturer was in compliance with the*
14 *requirements of this chapter at the time when the retailer initially*
15 *purchased that stock.*

16 (e) *The sale, distribution, or offering for sale, of any existing*
17 *inventory in stock prior to the commencement of the collection of*
18 *the mattress recycling charge pursuant to this chapter shall be*
19 *deemed to be in compliance with this chapter.*

20 ~~(d)~~

21 (f) If the department determines a manufacturer or retailer is
22 not in compliance with this chapter, the department shall remove
23 the manufacturer or retailer from the department's Internet Web
24 site pursuant to this section and the manufacturer or retailer shall
25 not sell a mattress in the state until the department determines the
26 manufacturer or retailer is in compliance with this chapter.

27 42993.1. (a) The department may impose an administrative
28 civil penalty on any manufacturer, mattress recycling organization,
29 recycler, renovator, or retailer that is in violation of this chapter.
30 The amount of the administrative civil penalty shall not exceed
31 five hundred dollars (\$500) per day, but, if the violation is
32 intentional, knowing, or reckless, the department may impose an
33 administrative civil penalty of not more than five thousand dollars
34 (\$5,000) per day.

35 (b) The department shall not impose a penalty on the mattress
36 recycling organization pursuant to this section for a failure to
37 comply with this chapter if the organization demonstrates it
38 received false or misleading information from a member of the
39 organization *or other party* that was the direct cause of its failure
40 to comply.

1 (c) The department shall deposit all penalties collected pursuant
2 to this section into the Mattress Recovery and Recycling Penalty
3 Account, which is hereby created in the Integrated Waste
4 Management Fund. Upon appropriation by the Legislature, moneys
5 deposited into the Mattress Recovery and Recycling Penalty
6 Account may be expended by the department to administer and
7 enforce this chapter.

8 42993.2. Upon *a written* finding that a manufacturer, mattress
9 recycling organization, or retailer has not met a *material*
10 requirement of this chapter, in addition to any other penalties
11 authorized under this chapter, the department may take any of the
12 following actions, *after affording the manufacturer, organization,*
13 *or retailer a reasonable opportunity to respond to, or rebut, the*
14 *finding*, to ensure compliance with the requirements of this chapter:

15 (a) Revoke the mattress recycling organization's plan approval;
16 ~~amend an approval or conditional approval to include new~~
17 ~~conditions~~, or require the mattress recycling organization to
18 resubmit the plan.

19 (b) Remove the manufacturer or retailer from the department's
20 Internet Web site and list of compliant manufacturers and retailers,
21 as specified in Section 42993.

22 (c) Require additional reporting requirements *relating to*
23 *compliance with the material requirement identified by the*
24 *department*.

25 42993.3. (a) A manufacturer and mattress recycling
26 organization shall do both of the following:

27 (1) Upon request, provide the department with reasonable and
28 timely access, as determined by the department and as authorized
29 pursuant to Title 13 (commencing with Section 1822.50) of Part
30 3 of the Code of Civil Procedure, to its facilities and operations,
31 as necessary to determine compliance with this chapter.

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

34 (b) The records required by this chapter shall be maintained and
35 accessible for three years. All reports and records provided to the
36 department pursuant to this chapter shall be provided under penalty
37 of perjury.

38 (c) The department may take disciplinary action against a
39 manufacturer or mattress recycling organization if the manufacturer
40 or mattress recycling organization fails to provide the department

1 with the access required pursuant to this section, including, but
2 not limited to, imposing penalties pursuant to Section 42993.1 and
3 posting an immediate notice on the department’s Internet Web site
4 pursuant to Section 42993 that the manufacturer is no longer in
5 compliance with this chapter.

6
7 Article 9. Antitrust Immunity
8

9 42994. (a) Except as provided in subdivision (c), an action
10 specified in subdivision (b) that is taken by a ~~stewardship~~*mattress*
11 *recycling* organization or its members that relates to any of the
12 following is not a violation of the Cartwright Act (Chapter 2
13 (commencing with Section 16700) of Part 2 of Division 7 of the
14 Business and Professions Code), the Unfair Practices Act (Chapter
15 4 (commencing with Section 17000) of Part 2 of Division 7 of the
16 Business and Professions Code), or the Unfair Competition Law
17 (Chapter 5 (commencing with Section 17200) of Part 2 of Division
18 7 of the Business and Professions Code).

19 (b) Subdivision (a) shall apply to all of the following actions
20 taken by the mattress recycling organization or a manufacturer:

21 (1) The creation, implementation, or management of a plan
22 approved by the department pursuant to Article 2 (commencing
23 with Section 42987) and the types or quantities of used mattresses
24 recycled or otherwise managed pursuant to a plan, as described in
25 Article 2 (commencing with Section 42987).

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

27 (3) The establishment, administration, or disbursement of the
28 ~~costs~~ *charges* associated with funding the implementation of this
29 chapter.

30 (c) Subdivision (a) shall not apply to an agreement that does
31 any of the following:

32 (1) Fixes a price of or for mattresses, except for an agreement
33 related to costs *or charges* associated with participation in a plan
34 approved or conditionally approved by the department and
35 otherwise in accordance with this chapter.

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

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

O