

AMENDED IN ASSEMBLY AUGUST 6, 2013

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 defined. *The bill would authorize the Department of Resources Recycling and Recovery to certify that a mattress recycling organization has been established. The bill would require the mattress recycling organization to develop, implement, and administer a mattress recycling program on or before July 1, 2014 pursuant to the act.* The bill would require ~~manufacturers~~ *manufacturers, renovators,* 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~~ *May* 1, 2015, the manufacturer or ~~retailer~~ *renovator* from, among other things, ~~manufacturing or selling in, or importing a mattress in into,~~ this state under circumstances of noncompliance with the bill's requirements *and would prohibit a retailer, on and after January 1, 2015, from selling a mattress under circumstances of noncompliance.* 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~~ *dropoff* of the used mattress.

This bill would require the mattress recycling organization, by ~~April~~ *July* 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 *used mattress recycling* 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, *renovator*, 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.

This bill would authorize the department to impose an administrative civil penalty on a ~~manufacturer~~ *manufacturer, organization, recycler,*

~~renovator, 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 $\frac{2}{3}$ of the membership of each house of the Legislature.

Vote: $\frac{2}{3}$. 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. (a) The Legislature finds and declares both of the
8 following:

9 (a)

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

17 (b)

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

1 (b) *It is the intent of the Legislature in enacting this chapter*
2 *that consumers have the opportunity to drop off their used*
3 *mattresses free of charge.*

4 42985.1. This chapter shall be known, and may be cited, as the
5 Used Mattress Recovery and Recycling Act.

6

7

Article 1. Definitions

8

9 42986. (a) (1) “Consumer” means an owner of a mattress,
10 including a person, business, corporation, limited partnership,
11 nonprofit organization, or governmental entity, and including the
12 ultimate purchaser, owner, or lessee of a mattress.

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

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

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

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

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

31 (A) The person who manufactures ~~the covered product~~ *a*
32 *mattress* and who sells, offers for sale, or distributes ~~that product~~
33 *in a mattress* in the state.

34 (B) If there is no person who is a manufacturer of ~~the product~~
35 *a mattress* for purposes of subparagraph (A), the manufacturer ~~of~~
36 ~~the covered product~~ is the person who imports the ~~product~~ *mattress*
37 into the state for sale or distribution.

38 ~~(2) A manufacturer may include a renovator.~~

39 ~~(3) A~~

1 (2) *Except as provided pursuant to paragraph (2) of subdivision*
2 *(b) of Section 42987, a retailer that brings a mattress into its store*
3 *locations from an out-of-state warehouse or distribution center is*
4 *not a manufacturer.*

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

9 (2) “Mattress” includes a foundation and a renovated mattress
10 or renovated foundation.

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

12 (A) An unattached mattress pad or unattached mattress topper,
13 including items with resilient filling, with or without ticking,
14 intended to be used with or on top of a mattress.

15 (B) A sleeping bag or pillow.

16 (C) A car bed, crib, or bassinet mattress.

17 (D) Juvenile products, including a carriage, basket, dressing
18 table, stroller, playpen, infant carrier, lounge pad, or crib bumper,
19 and the pads for those juvenile products.

20 (E) A product containing liquid- and gaseous-filled ticking,
21 including a water bed and air mattress that does not contain
22 upholstery material between the ticking and the mattress core.

23 (F) Upholstered furniture that does not otherwise contain a
24 detachable mattress or that is a fold out sofa bed or futon.

25 (g) “Mattress recycling organization” or “organization” means
26 an organization exempt from taxation under Section 501(c)(3) or
27 Section 501(c)(6) of the Internal Revenue Code of 1986, that is
28 established by a qualified industry association, composed of
29 ~~manufacturers~~ *manufacturers, renovators,* and retailers, and
30 certified pursuant to Section 42987, to develop, implement, and
31 administer the mattress recycling program established pursuant to
32 this chapter.

33 (h) “Used mattress recovery and recycling plan” or “plan” means
34 the plan for recycling used mattresses that is developed by the
35 mattress recycling organization pursuant to this chapter.

36 (i) “Program” or “used mattress recycling program” means the
37 program implemented by the mattress recycling organization
38 pursuant to a plan approved by the department.

39 (j) “Qualified industry association” means ~~the International~~
40 ~~Sleep Products Association, a successor of that organization, or a~~

1 ~~group of mattress manufacturers that collectively represent at least~~
2 ~~35 percent of the volume of mattresses manufactured in the United~~
3 ~~States~~ *a trade association that represents manufacturers that*
4 *account for a majority of mattress production in the United States,*
5 *or a successor of that organization.*

6 (k) “Recycle” or “recycling” has the same meaning as defined
7 in Section 40180.

8 (l) “Recycler” means a person that engages in the manual or
9 mechanical separation of mattresses to substantially recover
10 components and commodities contained in mattresses for the
11 purpose of reuse or recycling.

12 (m) “Recycling charge” or “charge” means the charge imposed
13 on the sale of a new or renovated mattress at the point of sale and
14 collected by the organization to fund the recycling of used
15 mattresses pursuant to this chapter.

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

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

20 (B) Adding additional filling.

21 (C) Rebuilding a used mattress.

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

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

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

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

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

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

38 (o) “Renovator” means a person who renovates used mattresses
39 *for the purpose of sale, or offering for sale, in this state.*

1 (p) “Retailer” means a person who sells mattresses in the state
2 or offers to a consumer a mattress in the state through any means,
3 including, but not limited to, by remote offering, including sales
4 outlets or catalogs, electronically through the Internet, by
5 telephone, or through the mail.

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

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

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

18 (s) “Used mattress” means a mattress that has been *abandoned*
19 *or* discarded by a consumer.

20
21 Article 2. Mattress Recycling Plan
22

23 42987. (a) (1) On or before July 1, 2014, a qualified industry
24 association or a successor organization may establish a mattress
25 recycling organization for purposes of this chapter, which shall be
26 composed of ~~manufacturers~~ *manufacturers, renovators,* and
27 retailers and be certified pursuant to this section to develop,
28 implement, and administer the mattress recycling program
29 established pursuant to this chapter.

30 (2) Within 60 days of receipt of a request for certification, the
31 department shall notify the requesting qualified industry association
32 of the department’s decision whether or not to certify that *a*
33 *mattress recycling organization has been established by the*
34 *qualified industry association or successor organization and is*
35 *composed of manufacturers, renovators, and retailers for purposes*
36 *of establishing the mattress recycling plan.*

37 (b) (1) On or before January 1, 2015, each ~~manufacturer~~
38 *manufacturer, renovator,* and retailer shall register with the
39 mattress recycling organization.

1 (2) A retailer may register with the mattress recycling
2 organization as a manufacturer for a brand for which there is not
3 a registered manufacturer.

4 (c) On and after January 1, 2015, a retailer shall not sell,
5 distribute, or offer for sale a mattress in the state unless the retailer
6 is in compliance with this chapter and the manufacturer *or*
7 *renovator* of the mattress sold by the retailer is listed in compliance
8 with this chapter.

9 (d) On and after ~~January 1, 2015~~, a ~~manufacturer shall not~~
10 ~~manufacture, assemble, or import a new~~ *May 1, 2015*, a
11 *manufacturer or renovator shall not sell, offer for sale, or import*
12 a mattress in this state, or sell or distribute a mattress to a
13 distributor or retailer, unless the manufacturer *or renovator* is in
14 compliance with this chapter.

15 42987.1. On or before ~~April~~ *July 1, 2015*, the mattress recycling
16 organization shall develop and submit to the department a plan for
17 recycling used mattresses in the state in an economically efficient
18 and practical manner that includes all of the following goals and
19 elements:

20 (a) Program objectives consistent with the state's solid waste
21 management hierarchy.

22 (b) The names of ~~manufacturers~~ *manufacturers, renovators,*
23 and brands covered under the plan.

24 (c) A consultation process with affected ~~stakeholders~~
25 *stakeholders, including, but not limited to, local government*
26 *representatives, recyclers, and solid waste industry representatives.*

27 (d) Methods to increase the number of used mattresses diverted
28 from landfills, reduce the number of illegally dumped used
29 mattresses, and increase the quantity of used materials recovered
30 through this process and recycled for other uses.

31 (e) (1) The establishment and administration of a means for
32 funding the plan in a manner that distributes the mattress recycling
33 organization's costs uniformly over all mattresses sold in the state.

34 (2) The funding mechanism shall provide sufficient funding for
35 the mattress recycling organization to carry out the plan, including
36 the administrative, operational, and capital costs of the plan.

37 (f) The publishing of an annual report for each calendar year of
38 operation.

39 (g) Conducting research, as needed, related to improving used
40 mattress collection, dismantling, and recycling operations,

1 including pilot programs to test new processes, methods, or
2 equipment on a local, regional, or otherwise limited basis.

3 ~~(h) Establishing a methodology for the purpose of determining~~
4 ~~the state mattress recycling goal.~~

5 ~~(i)~~

6 (h) A program performance measurement that shall collect
7 program data for the purpose of the annual report. The information
8 shall include:

9 (1) A methodology for estimating the amount of mattresses sold
10 in the state, used mattresses available for collection in the state,
11 and for quantifying the number of used mattresses collected and
12 recycled in the state.

13 (2) A methodology for determining mattresses sold in the state
14 by the manufacturers of the mattress recycling organization.

15 ~~(j) Coordinating activities with existing used product collecting~~
16 ~~and recycling plans for discarded mattresses or other products, and~~
17 ~~other relevant parties as appropriate, to provide~~

18 (i) *A description of methods used to coordinate activities with*
19 *existing used mattress collecting and recycling plans, including*
20 *existing nonprofit mattress recyclers, and with other relevant*
21 *parties as appropriate, with regard to the proper management or*
22 *recycling of discarded or abandoned mattresses, for purposes of*
23 *providing the efficient delivery of services and* ~~avoid~~ *avoiding*
24 *unnecessary duplication of effort and expense.*

25 ~~(k)~~

26 (j) Entering into contracts or agreements that are necessary and
27 proper for the mattress recycling organization to carry out these
28 duties consistent with the terms of this chapter.

29 ~~(l)~~

30 (k) Establishment of a financial incentive to encourage parties
31 to collect for recycling used mattresses discarded or illegally
32 dumped in the state.

33 ~~(m)~~

34 (l) Ensuring, to the maximum extent possible, that local
35 governments and solid waste facilities *that are permitted to accept*
36 *mattresses* are provided with a mechanism for the recovery of
37 ~~illegally disposed used-mattress mattresses~~ *that is funded at no*
38 *additional cost to the local government or solid waste facility.*

39 ~~(n)~~

1 (m) Developing processes to collect used mattresses from
 2 low-income communities for recycling in accordance with the
 3 poverty line annually established by the Secretary of California
 4 Health and Human Services pursuant to the federal Omnibus
 5 Budget Reconciliation Act of 1981 (Public Law 97-35), as
 6 amended.

7 ~~(n)~~

8 (n) Requiring used mattresses collected by a retailer to be
 9 delivered to a *mattress* recycling facility or solid waste facility for
 10 recycling *or proper disposal*.

11 ~~(o)~~

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

15 ~~(p)~~

16 (p) (1) Ensuring, to the maximum extent possible, that solid
 17 waste facilities offer individuals the free dropoff of used mattresses.

18 (2) Reimbursing solid waste facilities for the reasonable costs
 19 incurred in collecting, storing, and ~~processing~~ *handling* used
 20 mattresses in accordance with paragraph (1).

21 ~~(q)~~

22 (q) Other information requested by the department that is
 23 reasonably related to compliance with the recycling plan and that
 24 the organization can ~~readily~~ *reasonably* compile.

25 42987.2. In preparing the plan pursuant to Section 42987.1,
 26 the mattress recycling organization shall consult with interested
 27 ~~stakeholders~~ *stakeholders, which shall include, but not be limited*
 28 *to, local government representatives, recyclers, and solid waste*
 29 *industry representatives*.

30 42987.3. (a) The department shall review the plan for
 31 ~~consistency~~ *compliance* with this chapter and shall approve,
 32 disapprove, or conditionally approve the plan within 90 days of
 33 receipt of the plan. If the department fails to act within 90 days of
 34 the receipt of the plan, the plan shall be deemed approved.

35 (b) If the department disapproves the plan pursuant to
 36 subdivision (a), the department shall explain, in writing, how the
 37 plan ~~is inconsistent~~ *does not comply* with this chapter, and the
 38 mattress recycling organization shall resubmit a plan to the
 39 department. If the department finds that the plan resubmitted by
 40 the organization ~~is inconsistent~~ *does not comply* with the

1 requirements of this chapter, the mattress recycling organization
2 shall not be deemed in compliance with this chapter until the
3 organization submits a plan that the department finds ~~is consistent~~
4 *complies* with the requirements of this chapter.

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

14 42987.4. Within 60 days after approval or conditional approval
15 by the department, the mattress recycling organization shall
16 implement the approved plan.

17 42987.5. (a) (1) On or before January 1, 2017, based on
18 methodology contained in the plan and information contained in
19 the first annual report, the department, in consultation with the
20 organization, and after taking into consideration relevant economic
21 and practical considerations and other information, shall establish
22 and make public the following:

23 ~~(1)~~
24 (A) The state mattress recycling baseline amount.

25 ~~(2)~~
26 (B) The state mattress recycling goals.

27 (2) *When calculating the state mattress recycling goals, the*
28 *department shall include renovated mattresses.*

29 (b) *Beginning April 1, 2020, and annually thereafter, the annual*
30 *report required pursuant to Section 42990.1 shall demonstrate the*
31 *mattress recycling organization's substantial compliance with the*
32 *state mattress recycling goals established pursuant to this section.*

33 ~~(b)~~
34 (c) On or before July 1, 2020, and every four years thereafter,
35 the department shall review, including reviewing for consistency
36 with Section 41780.01, and update as necessary, the baseline
37 amount and goals to ensure that the program advances the statewide
38 recycling goal.

Article 3. Budget

1
2
3 42988. On or before July 1, 2015, and on or before July 1
4 annually thereafter, the mattress recycling organization shall
5 prepare and submit to the department a proposed used mattress
6 recycling program budget for the following calendar year that
7 includes all of the following:

8 (a) Anticipated revenues and costs of implementing the program,
9 including related programs, projects, contracts, and administrative
10 expenses.

11 (b) A recommended funding level sufficient to cover the plan’s
12 costs and to operate the mattress recycling program over a
13 multiyear period in a prudent and responsible manner.

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

16 42988.1. (a) On or before September 1, 2015, and annually
17 thereafter, the department shall ~~approve, disapprove, or~~
18 ~~conditionally approve a final program budget~~ *approve or*
19 *disapprove a final used mattress recycling program budget*. If the
20 department fails to act or does not disapprove ~~or conditionally~~
21 ~~approve~~ a final *used mattress recycling* program budget, the budget
22 shall be deemed approved.

23 (b) (1) If the department disapproves the budget, the mattress
24 recycling organization shall resubmit a revised budget addressing
25 the department’s written reasons for its decision within 30 days
26 of the disapproval.

27 (2) The department, within 30 days from the date the mattress
28 recycling organization resubmits a revised budget, shall ~~approve,~~
29 ~~disapprove, or conditionally~~ *approve or disapprove* a final *used*
30 *mattress recycling* program budget. If the department fails to act
31 or does not disapprove ~~or conditionally~~ ~~approve~~ a final program
32 budget within those 30 days, the budget shall be deemed approved.

33 42988.2. (a) The department shall notify the mattress recycling
34 organization of the department’s costs that are directly related to
35 implementing this chapter relating to the mattress recycling
36 organization’s activities pursuant to this chapter, including any
37 costs incurred in certifying the mattress recycling organization and
38 reviewing the organization’s plan submitted pursuant to Section
39 42987.1.

1 (b) On or before July 1, 2015, and once every three months
2 thereafter, and within the fiscal year, the mattress recycling
3 organization shall reimburse the department for costs the
4 department incurs that are directly related to the mattress recycling
5 organization's activities pursuant to this chapter. *The amount of*
6 *the reimbursement shall not exceed the direct costs incurred by*
7 *the department.*

8 (c) The department shall deposit all moneys submitted for
9 reimbursement costs by the mattress recycling organization
10 pursuant to this section into the Used Mattress Recycling Account,
11 which is hereby established in the Integrated Waste Management
12 Fund. Upon appropriation by the Legislature, moneys in the
13 account shall be expended by the department to administer and
14 enforce this chapter. The funds collected pursuant to this section
15 shall not be expended for any other purpose.

16
17 Article 4. Mattress Recycling Charge
18

19 42989. (a) The mattress recycling organization shall set the
20 amount of the mattress recycling charge that shall be added to the
21 purchase price of a mattress at the point of sale and include the
22 charge amount in the annual budget.

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

26 (2) The mattress recycling organization shall set the charge as
27 a flat rate and not as a percentage of the purchase price. The
28 organization shall not set more than two different charges to
29 accommodate mattress size differentials.

30 (c) (1) In the first 12 months during which the mattress
31 recycling ~~change~~ charge is collected, the mattress recycling
32 organization may change the amount of the mattress recycling
33 charge, in accordance with subdivision (b), and shall provide no
34 less than 90 days' notice to the public before the change in the
35 amount of the charge takes place.

36 (2) After one year from the date when the collection of the
37 mattress recycling charge commences, the mattress recycling
38 organization may change the amount of the charge in accordance
39 with subdivision (b), but the mattress recycling organization shall
40 not change the amount of the charge more frequently than annually,

1 and shall provide no less than 180 days’ notice to the public before
2 the change in the amount of the charge takes effect.

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

5 42989.1. (a) Each manufacturer, *renovator*, retailer, or
6 distributor that sells a mattress to a consumer or to the ultimate
7 end user of the mattress in the state shall add the charge to the
8 purchase price of the mattress and shall remit the charge collected
9 to the mattress recycling organization.

10 (b) In each transaction described in subdivision (a), the charge
11 shall be clearly visible on the invoice, receipt, or functionally
12 equivalent billing document provided by the seller to the consumer
13 as a separate line item.

14 (c) The mattress recycling organization shall develop
15 reimbursement criteria to enable retailers to recover administrative
16 costs associated with collecting the charge.

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

20 42989.2. (a) The mattress recycling organization may conduct
21 an audit of those parties that are required to remit the charge to
22 the mattress recycling organization to verify that the charges paid
23 are proper and accurate and to ensure all parties required by this
24 chapter to pay or collect the charge are paying or collecting the
25 proper amount.

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

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

34 (d) If the mattress recycling organization conducts an audit
35 pursuant to this section, the organization shall provide a copy of
36 the audit to the department ~~upon request by the department.~~

37 42989.3. (a) The mattress recycling organization shall deposit
38 the charges and other moneys collected by the mattress recycling
39 organization pursuant to this chapter in accounts that are
40 maintained and disbursed by the organization.

1 (b) The mattress recycling organization may enter into a joint
2 venture, agreements, or contracts with third parties, including, but
3 not limited to, corporations, partnerships, nonprofit entities, and
4 governmental agencies, to undertake activities on the mattress
5 recycling organization’s behalf that are consistent with this chapter.

6
7 Article 5. Records, Audits, and Annual Report

8
9 42990. (a) The mattress recycling organization shall keep
10 minutes, books, and records that clearly reflect the activities and
11 transactions of the mattress recycling organization.

12 (b) The *accounting* books of the mattress recycling organization
13 shall be audited at the organization’s expense by ~~a~~ *an independent*
14 certified public accountant retained by the organization at least
15 once each calendar year.

16 (c) The mattress recycling organization shall arrange for the
17 audit to be delivered to the department, *along with the annual*
18 *report required pursuant to Section 42990.1*. The department shall
19 review the audit for compliance with this chapter and consistency
20 with the plan created pursuant to this chapter. The department shall
21 notify the mattress recycling organization of any compliance issues
22 or inconsistencies. The mattress recycling organization may obtain
23 copies of the audit upon request. The department shall not disclose
24 any confidential proprietary information in the audit.

25 (d) *The department may conduct its own audit if it determines*
26 *that an audit is necessary to enforce the requirements of this*
27 *chapter and that the audit conducted pursuant to subdivision (b)*
28 *is not adequate for this purpose.*

29 42990.1. On or before April 1, 2016, and each year thereafter,
30 the mattress recycling organization shall submit to the department
31 and make publicly available on its Internet Web site a report that
32 includes, for the preceding calendar year, all of the following:

33 (a) The mattress recycling organization’s costs and revenues.

34 (b) The quantity of mattresses disposed of in solid waste
35 ~~landfills, which shall be provided by the department to interested~~
36 ~~parties~~ *landfills*.

37 (c) The quantity of discarded used mattresses collected for
38 recycling in the program.

39 (d) The quantity of used mattresses collected for recycling from
40 different categories of sources.

- 1 (e) The quantity of each category of materials recycled.
- 2 (f) The uses for the recycled materials.
- 3 (g) The quantity of otherwise disposed of materials.
- 4 (h) A description of methods used to collect, transport, and
- 5 process ~~waste used~~ mattresses in this state.
- 6 (i) Examples of educational materials that were provided to
- 7 consumers the first year and any changes to those materials in
- 8 subsequent years.
- 9 (j) The total volume, number, and weight of used mattresses
- 10 collected recycled, renovated, and reused in this state during the
- 11 preceding calendar year, including any conversion factor used to
- 12 determine the number of mattresses recovered.
- 13 *(k) For reports submitted on and after April 1, 2020, a*
- 14 *demonstration of substantial compliance with the state mattress*
- 15 *recycling goals established pursuant to Section 42987.5.*
- 16 ~~(k)~~
- 17 (l) Other information relevant to compliance with the plan.
- 18 *42990.2. No later than 60 days after the date the department*
- 19 *receives the annual report, the department shall notify the mattress*
- 20 *recycling organization of any deficiencies in the report. No later*
- 21 *than 60 days after receiving this notice from the department, the*
- 22 *mattress recycling organization shall provide additional*
- 23 *information, modification, or corrections in response to the*
- 24 *department’s notification.*

25
26 Article 6. Mattress Recycling and Renovating

- 27
- 28 42991. (a) On or before April 1, 2016, and annually thereafter,
- 29 a person that is engaged in business as a recycler or renovator shall
- 30 submit a report to the department that includes the following:
- 31 (1) Quantitative information on the number of mattresses
- 32 received and recycled or renovated in the state during the preceding
- 33 calendar year.
- 34 (2) Other information deemed necessary by the department that
- 35 is reasonably related to compliance with this chapter and that can
- 36 be ~~readily~~ *reasonably* compiled.
- 37 (b) For purposes of determining the used mattress recycling
- 38 rate, on or before April 1, 2016, and annually thereafter, ~~a the~~
- 39 *operator of a solid waste landfill facility operator that is permitted*
- 40 *to accept mattresses* shall report to the department, in a form and

1 manner determined by the department, regarding the number of
2 used mattresses received by that facility that were ~~recycled or~~
3 ~~renovated~~ recycled, renovated, or disposed of within the state in
4 the preceding calendar year.

5 (c) The department shall make the information provided
6 pursuant to this section available to interested parties and to the
7 public.

8

9

Article 7. Retailer Used Mattress Take-back

10

11 42992. (a) Except as provided in subdivision (d), on and after
12 July 1, 2014, a retailer shall offer a consumer the option to have
13 a used mattress picked up for recovery at the time of delivery, at
14 no additional cost to the consumer, if a new mattress is delivered
15 to the consumer.

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

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

20 (d) (1) A retailer or third-party contractor delivering a new
21 mattress may refuse to pick up a used mattress from a consumer
22 if the retailer or contractor determines the used mattress is
23 contaminated and poses a risk to personnel, new products, or
24 equipment.

25 (2) If the retailer or third party takes the action specified in
26 paragraph (1), the retailer or third-party contractor shall provide
27 the consumer with an opportunity for the free dropoff of the used
28 mattress in the manner specified in paragraph (q) of Section
29 42987.1.

30 (e) A common carrier delivering a new mattress to a consumer
31 as a result of an online purchase is not required to pick up a used
32 mattress for recovery.

33

34

Article 8. Enforcement

35

36 42993. (a) On or before ~~July 1, 2016,~~ March 1, 2015, and
37 annually thereafter, the department shall post on its Internet Web
38 site a list of manufacturers and ~~retailers~~ renovators that are in
39 compliance with this chapter.

1 (b) A manufacturer or ~~retailer~~ *renovator* that is not listed on
2 the department's Internet Web site pursuant to this section, but
3 demonstrates compliance with this chapter before the next notice
4 is required to be posted pursuant to this section, may request a
5 certification letter from the department stating the manufacturer
6 or ~~retailer~~ *renovator* is in compliance. The manufacturer or ~~retailer~~
7 *renovator* that receives the letter shall be deemed to be in
8 compliance with this chapter.

9 (c) A retailer that distributes or sells a mattress shall monitor
10 the department's Internet Web site to determine if a manufacturer
11 or *renovator* is in compliance with this chapter. A retailer
12 otherwise in compliance with this chapter shall be deemed in
13 compliance with the chapter if, on the date the retailer ordered or
14 purchased a mattress, or within ~~30~~ 120 calendar days before or
15 after that date, the manufacturer or *renovator* was listed as ~~covered~~
16 or compliant on the department's Internet Web site.

17 (d) A retailer may sell or distribute the existing stock of its
18 inventory through sales to the public if the existing stock was
19 purchased when the manufacturer or *renovator* was in compliance
20 with the requirements of this chapter at the time when the retailer
21 initially purchased that stock.

22 (e) The sale, distribution, or offering for sale, of any existing
23 inventory in stock prior to the commencement of the collection of
24 the mattress recycling charge pursuant to this chapter shall be
25 deemed to be in compliance with this chapter.

26 (f) If the department determines a manufacturer or ~~retailer~~
27 *renovator* is not in compliance with this chapter, the department
28 shall remove the manufacturer or ~~retailer~~ *renovator* from the
29 department's Internet Web site pursuant to this section and the
30 manufacturer or ~~retailer~~ *renovator* shall not sell a mattress in the
31 state until the department determines the manufacturer or ~~retailer~~
32 *renovator* is in compliance with this chapter.

33 42993.1. (a) The department may impose an administrative
34 civil penalty on any manufacturer, mattress recycling organization,
35 recycler, renovator, or retailer that is in violation of this chapter.
36 The amount of the administrative civil penalty shall not exceed
37 five hundred dollars (\$500) per day, but, if the violation is
38 intentional, knowing, or reckless, the department may impose an
39 administrative civil penalty of not more than five thousand dollars
40 (\$5,000) per day.

1 (b) The department shall not impose a penalty on the mattress
2 recycling organization pursuant to this section for a failure to
3 comply with this chapter if the organization demonstrates it
4 received false or misleading information from a member of the
5 organization or other party that was the direct cause of its failure
6 to comply.

7 (c) The department shall deposit all penalties collected pursuant
8 to this section into the Mattress Recovery and Recycling Penalty
9 Account, which is hereby created in the Integrated Waste
10 Management Fund. Upon appropriation by the Legislature, moneys
11 deposited into the Mattress Recovery and Recycling Penalty
12 Account ~~may~~ *shall* be expended by the department to administer
13 and enforce this chapter, *including offsetting the costs incurred by*
14 *the department pursuant to Section 42988.2.*

15 42993.2. Upon a written finding that a manufacturer, mattress
16 recycling organization, *renovator*, or retailer has not met a material
17 requirement of this chapter, in addition to any other penalties
18 authorized under this chapter, the department may take any of the
19 following actions, after affording the manufacturer, organization,
20 *renovator*, or retailer a reasonable opportunity to respond to, or
21 rebut, the finding, to ensure compliance with the requirements of
22 this chapter:

23 (a) Revoke the mattress recycling organization's plan approval
24 or require the mattress recycling organization to resubmit the plan.

25 (b) Remove the manufacturer or ~~retailer~~ *renovator* from the
26 department's Internet Web site and list of compliant manufacturers
27 and ~~retailers~~ *renovators*, as specified in Section 42993.

28 (c) Require additional reporting requirements relating to
29 compliance with the material requirement identified by the
30 department.

31 42993.3. (a) A ~~manufacturer and~~ *manufacturer, renovator,*
32 *retailer, and* mattress recycling organization shall do both of the
33 following:

34 (1) Upon request, provide the department with reasonable and
35 timely access, as determined by the department and as authorized
36 pursuant to Title 13 (commencing with Section 1822.50) of Part
37 3 of the Code of Civil Procedure, to its facilities and operations,
38 as necessary to determine compliance with this chapter.

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

1 (b) The records required by this chapter shall be maintained and
2 accessible for three years. All reports and records provided to the
3 department pursuant to this chapter shall be provided under penalty
4 of perjury.

5 (c) The department may take disciplinary action against a
6 ~~manufacturer~~ *manufacturer, renovator, retailer*, or mattress
7 recycling organization if the ~~manufacturer~~ *manufacturer, renovator,*
8 *retailer*, or mattress recycling organization fails to provide the
9 department with the access required pursuant to this section,
10 including, but not limited to, imposing penalties pursuant to Section
11 42993.1 and posting an immediate notice on the department's
12 Internet Web site pursuant to Section 42993 that the manufacturer
13 *or renovator* is no longer in compliance with this chapter.

14

15 Article 9. Antitrust Immunity

16

17 42994. (a) Except as provided in subdivision (c), an action
18 specified in subdivision (b) that is taken by a mattress recycling
19 organization or its members that relates to any of the following is
20 not a violation of the Cartwright Act (Chapter 2 (commencing with
21 Section 16700) of Part 2 of Division 7 of the Business and
22 Professions Code), the Unfair Practices Act (Chapter 4
23 (commencing with Section 17000) of Part 2 of Division 7 of the
24 Business and Professions Code), or the Unfair Competition Law
25 (Chapter 5 (commencing with Section 17200) of Part 2 of Division
26 7 of the Business and Professions Code).

27 (b) Subdivision (a) shall apply to all of the following actions
28 taken by the mattress recycling ~~organization or a manufacturer~~
29 *organization, manufacturer, or renovator*:

30 (1) The creation, implementation, or management of a plan
31 approved by the department pursuant to Article 2 (commencing
32 with Section 42987) and the types or quantities of used mattresses
33 recycled or otherwise managed pursuant to a plan, as described in
34 Article 2 (commencing with Section 42987).

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

36 (3) The establishment, administration, *collection*, or
37 disbursement of the charges associated with funding the
38 implementation of this chapter.

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

- 1 (1) Fixes a price of or for mattresses, except for an agreement
- 2 related to costs or charges associated with participation in a plan
- 3 approved or conditionally approved by the department and
- 4 otherwise in accordance with this chapter.
- 5 (2) Fixes the output of production of mattresses.
- 6 (3) Restricts the geographic area in which, or customers to
- 7 whom, mattresses will be sold.

O