

AMENDED IN ASSEMBLY AUGUST 19, 2013

AMENDED IN ASSEMBLY AUGUST 6, 2013

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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. 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 pursuant to

the act. The bill would require ~~manufacturers, renovators, and retailers~~ *manufacturers and renovators* of mattresses to register with the mattress recycling organization on or before January 1, 2015.

This bill would prohibit, on and after May 1, 2015, ~~the manufacturer or renovator~~ *a manufacturer, renovator, or retailer* from, among other things, selling in, or importing a mattress 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.~~ *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 dropoff of the used mattress.

This bill would require the mattress recycling organization, by 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 *certain* solid waste facilities to recover illegally disposed mattresses that is funded, as specified, and reimbursing *those* 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 *for approval*, 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, organization, recycler, renovator, or retailer 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. (a) The Legislature finds and declares both 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
11 management of used mattresses, the Used Mattress Recovery and
12 Recycling Act is hereby established by this chapter to require
13 manufacturers of mattresses sold in this state to develop, finance,
14 and implement a convenient and cost-effective program to recover
15 and recycle used mattresses generated in this state.

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

1 (b) It is the intent of the Legislature in enacting this chapter that
2 consumers have the opportunity to drop off their used mattresses
3 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 a mattress and who sells,
32 offers for sale, or distributes a mattress in the state.

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

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

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

1 components and commodities contained in mattresses for the
2 purpose of reuse or recycling.

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

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

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

11 (B) Adding additional filling.

12 (C) Rebuilding a used mattress.

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

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

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

21 (B) Sterilizing or sanitizing a mattress without otherwise altering
22 the mattress.

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

25 (D) Refurbishing that disqualifies a mattress for a yellow
26 wholesale renovator tag to be affixed to the mattress, in accordance
27 with the regulations adopted by the Department of Consumer
28 Affairs.

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

31 (p) “Retailer” means a person who sells mattresses in the state
32 or offers to a consumer a mattress in the state through any means,
33 including, but not limited to, by remote offering, including sales
34 outlets or catalogs, electronically through the Internet, by
35 telephone, or through the mail.

36 (q) “Sale” or “sell” means the transfer of title of a mattress for
37 consideration, including by a manufacturer, a distributor, or a
38 retailer for eventual consumption to a consumer in the state,
39 including remote sales conducted through sales outlets, catalogs,
40 or the Internet or any other similar electronic means. For purposes

1 of this chapter, a long-term lease of not less than 12 months is the
2 same as a sale.

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

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

8 (s) “Used mattress” means a mattress that has been abandoned
9 or discarded by a consumer.

10

11 Article 2. Mattress Recycling Plan

12

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

20 (2) Within 60 days of receipt of a request for certification, the
21 department shall notify the requesting qualified industry association
22 of the department’s decision whether or not to certify that a
23 mattress recycling organization has been established by the
24 qualified industry association or successor organization and is
25 composed of manufacturers, renovators, and retailers for purposes
26 of establishing the mattress recycling plan.

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

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

33 (c) On and after ~~January~~ *May* 1, 2015, a retailer shall not sell,
34 distribute, or offer for sale a mattress in the state unless the retailer
35 is in compliance with this chapter and the manufacturer or
36 renovator of the mattress sold by the retailer is listed in compliance
37 with this chapter.

38 (d) On and after May 1, 2015, a manufacturer or renovator shall
39 not sell, offer for sale, or import a mattress in this state, or sell or

1 distribute a mattress to a distributor or retailer, unless the
2 manufacturer or renovator is in compliance with this chapter.

3 42987.1. On or before July 1, 2015, the mattress recycling
4 organization shall develop and submit to the department a plan for
5 recycling used mattresses in the state in an economically efficient
6 and practical manner that includes all of the following goals and
7 elements:

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

10 (b) The names of manufacturers, renovators, and brands covered
11 under the plan.

12 (c) A consultation process with affected stakeholders, including,
13 but not limited to, local government representatives, recyclers, and
14 solid waste industry representatives.

15 (d) Methods to increase the number of used mattresses diverted
16 from landfills, reduce the number of illegally dumped used
17 mattresses, and increase the quantity of used materials recovered
18 through this process and recycled for other uses.

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

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

25 (f) The publishing of an annual report for each calendar year of
26 operation.

27 (g) Conducting research, as needed, related to improving used
28 mattress collection, dismantling, and recycling operations,
29 including pilot programs to test new processes, methods, or
30 equipment on a local, regional, or otherwise limited basis.

31 (h) A program performance measurement that shall collect
32 program data for the purpose of the annual report. The information
33 shall include:

34 (1) A methodology for estimating the amount of mattresses sold
35 in the state, used mattresses available for collection in the state,
36 and for quantifying the number of used mattresses collected and
37 recycled in the state.

38 (2) A methodology for determining mattresses sold in the state
39 by the manufacturers *and renovators* of the mattress recycling
40 organization.

1 (i) A description of methods used to coordinate activities with
2 existing used mattress collecting and recycling ~~plans, programs,~~
3 including existing nonprofit mattress recyclers, and with other
4 relevant parties as appropriate, with regard to the proper
5 management or recycling of discarded or abandoned mattresses,
6 for purposes of providing the efficient delivery of services and
7 avoiding unnecessary duplication of effort and expense.

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

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

14 (l) Ensuring, to the maximum extent possible, that local
15 governments and solid waste facilities that are permitted to accept
16 mattresses are provided with a mechanism for the recovery of
17 illegally disposed used mattresses that is funded at no additional
18 cost to the local government or solid waste facility.

19 (m) Developing processes to collect used mattresses from
20 low-income communities for recycling in accordance with the
21 poverty line annually established by the Secretary of California
22 Health and Human Services pursuant to the federal Omnibus
23 Budget Reconciliation Act of 1981 (Public Law 97-35), as
24 amended.

25 ~~(n) Requiring used mattresses collected by a retailer to be
26 delivered to a mattress recycling facility or solid waste facility for
27 recycling or proper disposal.~~

28 ~~(o)~~

29 (n) Providing outreach efforts and education to consumers,
30 manufacturers, and retailers, for the purpose of promoting the
31 recycling of used mattresses.

32 ~~(p)~~

33 (o) (1) Ensuring, to the maximum extent possible, that solid
34 waste facilities *that are permitted to accept mattresses* offer
35 individuals the free dropoff of used mattresses.

36 (2) Reimbursing solid waste facilities *that are permitted to*
37 *accept mattresses* for the reasonable costs incurred in collecting,
38 storing, and handling used mattresses in accordance with paragraph
39 (1).

40 ~~(q)~~

1 (p) Other information requested by the department that is
2 reasonably related to compliance with the recycling plan and that
3 the organization can reasonably compile.

4 42987.2. In preparing the plan pursuant to Section 42987.1,
5 the mattress recycling organization shall consult with interested
6 stakeholders, which shall include, but not be limited to, local
7 government representatives, recyclers, and solid waste industry
8 representatives.

9 42987.3. (a) The department shall review the plan for
10 compliance with this chapter and shall approve, disapprove, or
11 conditionally approve the plan within 90 days of receipt of the
12 plan. If the department fails to act within 90 days of the receipt of
13 the plan, the plan shall be deemed approved.

14 (b) If the department disapproves the plan pursuant to
15 subdivision (a), the department shall explain, in writing, how the
16 plan does not comply with this chapter, and the mattress recycling
17 organization shall resubmit a plan to the department. If the
18 department finds that the plan resubmitted by the organization
19 does not comply with the requirements of this chapter, the mattress
20 recycling organization shall not be deemed in compliance with
21 this chapter until the organization submits a plan that the
22 department finds complies with the requirements of this chapter.

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

32 42987.4. Within 60 days after approval or conditional approval
33 by the department, the mattress recycling organization shall
34 implement the approved plan.

35 42987.5. (a) (1) On or before January 1, 2017, based on
36 methodology contained in the plan and information contained in
37 the first annual report, the department, in consultation with the
38 organization, and after taking into consideration relevant economic
39 and practical considerations and other information, shall establish
40 and make public the following:

1 (A) The state mattress recycling baseline amount.

2 (B) The state mattress recycling goals.

3 (2) When calculating the state mattress recycling goals, the
4 department shall include renovated mattresses.

5 (b) Beginning April 1, 2020, and annually thereafter, the annual
6 report required pursuant to Section 42990.1 shall demonstrate the
7 mattress recycling organization's substantial compliance with the
8 state mattress recycling goals established pursuant to this section.

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

14
15 Article 3. Budget

16
17 42988. On or before July 1, 2015, and on or before July 1
18 annually thereafter, the mattress recycling organization shall
19 prepare and submit to the department a proposed used mattress
20 recycling program budget for the following calendar year that
21 includes all of the following:

22 (a) Anticipated revenues and costs of implementing the program,
23 including related programs, projects, contracts, and administrative
24 expenses.

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

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

30 42988.1. (a) On or before September 1, 2015, and annually
31 thereafter, the department shall approve or disapprove a final used
32 mattress recycling program budget. If the department fails to act
33 or does not disapprove a final used mattress recycling program
34 budget, the budget shall be deemed approved.

35 (b) (1) If the department disapproves the budget, the mattress
36 recycling organization shall resubmit a revised budget addressing
37 the department's written reasons for its decision within 30 days
38 of the disapproval.

39 (2) The department, within 30 days from the date the mattress
40 recycling organization resubmits a revised budget, shall approve

1 or disapprove a final used mattress recycling program budget. If
2 the department fails to act or does not disapprove a final program
3 budget within those 30 days, the budget shall be deemed approved.

4 42988.2. (a) The department shall notify the mattress recycling
5 organization of the department's costs that are directly related to
6 implementing this chapter relating to the mattress recycling
7 organization's activities pursuant to this chapter, including any
8 costs incurred in certifying the mattress recycling organization and
9 reviewing the organization's plan submitted pursuant to Section
10 42987.1.

11 (b) On or before July 1, 2015, and once every three months
12 thereafter, and within the fiscal year, the mattress recycling
13 organization shall reimburse the department for costs the
14 department incurs that are directly related to the mattress recycling
15 organization's activities pursuant to this chapter. The amount of
16 the reimbursement shall not exceed the direct costs incurred by
17 the department.

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

26

27 Article 4. Mattress Recycling Charge

28

29 42989. (a) The mattress recycling organization shall set the
30 amount of the mattress recycling charge that shall be added to the
31 purchase price of a mattress at the point of sale and include the
32 charge amount in the annual budget.

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

36 (2) The mattress recycling organization shall set the charge as
37 a flat rate and not as a percentage of the purchase price. The
38 organization shall not set more than two different charges to
39 accommodate mattress size differentials.

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

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

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

16 42989.1. (a) ~~Each~~ *Commencing 60 days after the date the*
17 *department approves or conditionally approves the plan pursuant*
18 *to Section 42987.3, each* manufacturer, renovator, retailer, or
19 distributor that sells a mattress to a consumer or to the ultimate
20 end user of the mattress in the state shall add the charge to the
21 purchase price of the mattress and shall remit the charge collected
22 to the mattress recycling organization.

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

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

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

33 42989.2. (a) The mattress recycling organization may conduct
34 an audit of those parties that are required to remit the charge to
35 the mattress recycling organization to verify that the charges paid
36 are proper and accurate and to ensure all parties required by this
37 chapter to pay or collect the charge are paying or collecting the
38 proper amount.

39 (b) An audit conducted pursuant to this section shall be carried
40 out in accordance with generally accepted auditing practices and

1 shall be limited in scope to confirming whether the charge has
2 been properly collected on all sales of mattresses to consumers in
3 the state.

4 (c) For purposes of conducting audits pursuant to this section,
5 the mattress recycling organization shall hire independent
6 third-party auditors.

7 (d) If the mattress recycling organization conducts an audit
8 pursuant to this section, the organization shall provide a copy of
9 the audit to the department.

10 42989.3. (a) The mattress recycling organization shall deposit
11 the charges and other moneys collected by the mattress recycling
12 organization pursuant to this chapter in accounts that are
13 maintained and disbursed by the organization.

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

19

20 Article 5. Records, Audits, and Annual Report

21

22 42990. (a) The mattress recycling organization shall keep
23 minutes, books, and records that clearly reflect the activities and
24 transactions of the mattress recycling organization.

25 (b) The accounting books of the mattress recycling organization
26 shall be audited at the organization’s expense by an independent
27 certified public accountant retained by the organization at least
28 once each calendar year.

29 (c) The mattress recycling organization shall arrange for the
30 audit to be delivered to the department, along with the annual
31 report required pursuant to Section 42990.1. The department shall
32 review the audit for compliance with this chapter and consistency
33 with the plan created pursuant to this chapter. The department shall
34 notify the mattress recycling organization of any compliance issues
35 or inconsistencies. The mattress recycling organization may obtain
36 copies of the audit upon request. The department shall not disclose
37 any confidential proprietary information in the audit.

38 (d) The department may conduct its own audit if it determines
39 that an audit is necessary to enforce the requirements of this chapter

1 and that the audit conducted pursuant to subdivision (b) is not
2 adequate for this purpose.

3 42990.1. On or before April 1, 2016, and each year thereafter,
4 the mattress recycling organization shall submit to the department
5 and make publicly available on its Internet Web site a report that
6 includes, for the preceding calendar year, all of the following:

7 (a) The mattress recycling organization's costs and revenues.

8 (b) The quantity of mattresses disposed of in solid waste
9 landfills.

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

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

14 (e) The quantity of each category of materials recycled.

15 (f) The uses for the recycled materials.

16 (g) The quantity of otherwise disposed of materials.

17 (h) A description of methods used to collect, transport, and
18 process used mattresses in this state.

19 (i) Examples of educational materials that were provided to
20 consumers the first year and any changes to those materials in
21 subsequent years.

22 (j) The total volume, number, and weight of used mattresses
23 collected recycled, renovated, and reused in this state during the
24 preceding calendar year, including any conversion factor used to
25 determine the number of mattresses recovered.

26 (k) For reports submitted on and after April 1, 2020, a
27 demonstration of substantial compliance with the state mattress
28 recycling goals established pursuant to Section 42987.5.

29 (l) Other information relevant to compliance with the plan.

30 42990.2. No later than 60 days after the date the department
31 receives the annual report, the department shall notify the mattress
32 recycling organization of any deficiencies in the report. No later
33 than 60 days after receiving this notice from the department, the
34 mattress recycling organization shall provide additional
35 information, modification, or corrections in response to the
36 department's notification.

1 Article 6. Mattress Recycling and Renovating

2
3 42991. (a) On or before April 1, 2016, and annually thereafter,
4 a person that is engaged in business as a recycler or renovator shall
5 submit a report to the department that includes the following:

6 (1) Quantitative information on the number of mattresses
7 received and recycled or renovated in the state during the preceding
8 calendar year.

9 (2) Other information deemed necessary by the department that
10 is reasonably related to compliance with this chapter and that can
11 be reasonably compiled.

12 (b) For purposes of determining the used mattress recycling
13 rate, on or before April 1, 2016, and annually thereafter, the
14 operator of a solid waste landfill facility operator that is permitted
15 to accept mattresses shall report to the department, in a form and
16 manner determined by the department, regarding the number of
17 used mattresses received by that facility that were recycled,
18 renovated, or disposed of within the state in the preceding calendar
19 year.

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

22
23 Article 7. Retailer Used Mattress Take-back

24
25 42992. (a) Except as provided in subdivision (d), on and after
26 July 1, 2014, a retailer shall offer a consumer the option to have
27 a used mattress picked up for recovery at the time of delivery, at
28 no additional cost to the consumer, if a new mattress is delivered
29 to the consumer.

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

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

34 (d) (1) A retailer or third-party contractor delivering a new
35 mattress may refuse to pick up a used mattress from a consumer
36 if the retailer or contractor determines the used mattress is
37 contaminated and poses a risk to personnel, new products, or
38 equipment.

39 (2) If the retailer or third party takes the action specified in
40 paragraph (1), the retailer or third-party contractor shall provide

1 the consumer with an opportunity for the free dropoff of the used
2 mattress in the manner specified in paragraph ~~(q)~~ (o) of Section
3 42987.1.

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

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Article 8. Enforcement

10 42993. (a) On or before March 1, 2015, and annually thereafter,
11 the department shall post on its Internet Web site a list of
12 manufacturers and renovators that are in compliance with this
13 chapter.

14 (b) A manufacturer or renovator that is not listed on the
15 department's Internet Web site pursuant to this section, but
16 demonstrates compliance with this chapter before the next notice
17 is required to be posted pursuant to this section, may request a
18 certification letter from the department stating the manufacturer
19 or renovator is in compliance. The manufacturer or renovator that
20 receives the letter shall be deemed to be in compliance with this
21 chapter.

22 (c) A retailer that distributes or sells a mattress shall monitor
23 the department's Internet Web site to determine if a manufacturer
24 or renovator is in compliance with this chapter. A retailer otherwise
25 in compliance with this chapter shall be deemed in compliance
26 with the chapter if, on the date the retailer ordered or purchased a
27 mattress, or within 120 calendar days before or after that date, the
28 manufacturer or renovator was listed as compliant on the
29 department's Internet Web site.

30 (d) A retailer may sell or distribute the existing stock of its
31 inventory through sales to the public if the existing stock was
32 purchased when the manufacturer or renovator was in compliance
33 with the requirements of this chapter at the time when the retailer
34 initially purchased that stock.

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

39 (f) If the department determines a manufacturer or renovator is
40 not in compliance with this chapter, the department shall remove

1 the manufacturer or renovator from the department's Internet Web
2 site pursuant to this section and the manufacturer or renovator shall
3 not sell a mattress in the state until the department determines the
4 manufacturer or renovator is in compliance with this chapter.

5 42993.1. (a) The department may impose an administrative
6 civil penalty on any manufacturer, mattress recycling organization,
7 recycler, renovator, or retailer that is in violation of this chapter.
8 The amount of the administrative civil penalty shall not exceed
9 five hundred dollars (\$500) per day, but, if the violation is
10 intentional, knowing, or reckless, the department may impose an
11 administrative civil penalty of not more than five thousand dollars
12 (\$5,000) per day.

13 (b) The department shall not impose a penalty on the mattress
14 recycling organization pursuant to this section for a failure to
15 comply with this chapter if the organization demonstrates it
16 received false or misleading information from a member of the
17 organization or other party that was the direct cause of its failure
18 to comply.

19 (c) The department shall deposit all penalties collected pursuant
20 to this section into the Mattress Recovery and Recycling Penalty
21 Account, which is hereby created in the Integrated Waste
22 Management Fund. Upon appropriation by the Legislature, moneys
23 deposited into the Mattress Recovery and Recycling Penalty
24 Account shall be expended by the department to administer and
25 enforce this chapter, including offsetting the costs incurred by the
26 department pursuant to Section 42988.2.

27 42993.2. Upon a written finding that a manufacturer, mattress
28 recycling organization, renovator, or retailer has not met a material
29 requirement of this chapter, in addition to any other penalties
30 authorized under this chapter, the department may take any of the
31 following actions, after affording the manufacturer, organization,
32 renovator, or retailer a reasonable opportunity to respond to, or
33 rebut, the finding, to ensure compliance with the requirements of
34 this chapter:

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

37 (b) Remove the manufacturer or renovator from the department's
38 Internet Web site and list of compliant manufacturers and
39 renovators, as specified in Section 42993.

1 (c) Require additional reporting requirements relating to
2 compliance with the material requirement identified by the
3 department.

4 42993.3. (a) A manufacturer, renovator, retailer, and mattress
5 recycling organization shall do both of the following:

6 (1) Upon request, provide the department with reasonable and
7 timely access, as determined by the department and as authorized
8 pursuant to Title 13 (commencing with Section 1822.50) of Part
9 3 of the Code of Civil Procedure, to its facilities and operations,
10 as necessary to determine compliance with this chapter.

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

13 (b) The records required by this chapter shall be maintained and
14 accessible for three years. All reports and records provided to the
15 department pursuant to this chapter shall be provided under penalty
16 of perjury.

17 (c) The department may take disciplinary action against a
18 manufacturer, renovator, retailer, or mattress recycling organization
19 if the manufacturer, renovator, retailer, or mattress recycling
20 organization fails to provide the department with the access
21 required pursuant to this section, including, but not limited to,
22 imposing penalties pursuant to Section 42993.1 and posting an
23 immediate notice on the department's Internet Web site pursuant
24 to Section 42993 that the manufacturer or renovator is no longer
25 in compliance with this chapter.

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27 Article 9. Antitrust Immunity

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29 42994. (a) Except as provided in subdivision (c), an action
30 specified in subdivision (b) that is taken by a mattress recycling
31 organization or its members that relates to any of the following is
32 not a violation of the Cartwright Act (Chapter 2 (commencing with
33 Section 16700) of Part 2 of Division 7 of the Business and
34 Professions Code), the Unfair Practices Act (Chapter 4
35 (commencing with Section 17000) of Part 2 of Division 7 of the
36 Business and Professions Code), or the Unfair Competition Law
37 (Chapter 5 (commencing with Section 17200) of Part 2 of Division
38 7 of the Business and Professions Code).

1 (b) Subdivision (a) shall apply to all of the following actions
2 taken by the mattress recycling organization, manufacturer, or
3 renovator:

4 (1) The creation, implementation, or management of a plan
5 approved by the department pursuant to Article 2 (commencing
6 with Section 42987) and the types or quantities of used mattresses
7 recycled or otherwise managed pursuant to a plan, as described in
8 Article 2 (commencing with Section 42987).

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

10 (3) The establishment, administration, collection, or
11 disbursement of the charges associated with funding the
12 implementation of this chapter.

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

15 (1) Fixes a price of or for mattresses, except for an agreement
16 related to costs or charges associated with participation in a plan
17 approved or conditionally approved by the department and
18 otherwise in accordance with this chapter.

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

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