

AMENDED IN ASSEMBLY AUGUST 26, 2013

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~~ Coauthors: Senators Corbett and Leno)
(Coauthor: Assembly Member Garcia)

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 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~~ *January 1, 2016*, 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. 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 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 that are directly related to implementing and enforcing 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 *and to reimburse any outstanding loans made from other funds used to finance the startup costs of the department, as provided.*

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. *The bill would exempt mattresses manufactured by the Prison Industry Authority and purchased by the state from collecting and remitting the mattress recycling charge.*

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 $\frac{2}{3}$ 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~~ *all* of the
8 following:

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

1 support of the statewide goal that at least 75 percent of all solid
2 waste be recycled by January 1, 2020.

3 (3) *Used mattresses and their components are not hazardous*
4 *household materials, but they can impose financial and other costs*
5 *on society at the end of their useful lives.*

6 (b) It is the intent of the Legislature in enacting this chapter that
7 consumers have the opportunity to drop off their used mattresses
8 free of charge.

9 42985.1. This chapter shall be known, and may be cited, as the
10 Used Mattress Recovery and Recycling Act.

11

12 Article 1. Definitions

13

14 42986. (a) (1) “Consumer” means an owner of a mattress,
15 including a person, business, corporation, limited partnership,
16 nonprofit organization, or governmental entity, and including the
17 ultimate purchaser, owner, or lessee of a mattress.

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

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

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

30 (d) *“Good faith effort” means all reasonable and economically*
31 *practical efforts by a mattress recycling organization to implement*
32 *the components identified in its approved plan consistent with its*
33 *annual budget.*

34 (~~e~~)

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

40 (~~e~~)

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

2 (A) The person who manufactures a mattress and who sells,
3 offers for sale, or distributes a mattress in the state.

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

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

11 ~~(f)~~

12 (g) (1) “Mattress” means a resilient material or combination of
13 materials that is enclosed by a ticking, is used alone or in
14 combination with other products, and is intended for or promoted
15 for sleeping upon.

16 (2) “Mattress” includes a foundation and a renovated mattress
17 or renovated foundation.

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

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

22 (B) A sleeping bag or pillow.

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

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

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

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

32 ~~(g)~~

33 (h) “Mattress recycling organization” or “organization” means
34 an organization exempt from taxation under Section 501(c)(3) or
35 Section 501(c)(6) of the Internal Revenue Code of 1986, that is
36 established by a qualified industry association, composed of
37 manufacturers, renovators, and retailers, and certified pursuant to
38 Section 42987, to develop, implement, and administer the mattress
39 recycling program established pursuant to this chapter.

40 ~~(h)~~

- 1 (i) “Used mattress recovery and recycling plan” or “plan” means
2 the plan for recycling used mattresses that is developed by the
3 mattress recycling organization pursuant to this chapter.
4 ~~(i)~~
- 5 (j) “Program” or “used mattress recycling program” means the
6 program implemented by the mattress recycling organization
7 pursuant to a plan approved by the department.
8 ~~(j)~~
- 9 (k) “Qualified industry association” means ~~a trade association~~
10 ~~that represents manufacturers that account for a majority of mattress~~
11 ~~production in the United States, or a successor of that organization~~
12 *the International Sleep Products Association or a successor of*
13 *that organization.*
14 ~~(k)~~
- 15 (l) “Recycle” or “recycling” has the same meaning as defined
16 in Section 40180.
17 ~~(l)~~
- 18 (m) “Recycler” means a person that engages in the manual or
19 mechanical separation of mattresses to substantially recover
20 components and commodities contained in mattresses for the
21 purpose of reuse or recycling.
22 ~~(m)~~
- 23 (n) “Recycling charge” or “charge” means the charge imposed
24 on the sale of a new or renovated mattress at the point of sale and
25 collected by the organization to fund the recycling of used
26 mattresses pursuant to this chapter.
27 ~~(n)~~
- 28 (o) (1) “Renovate” or “renovation” means altering a used
29 mattress for the purpose of resale and includes one or more of the
30 following:
31 (A) Replacing the mattress, ticking, or filling.
32 (B) Adding additional filling.
33 (C) Rebuilding a used mattress.
34 (D) Replacing components with new or postconsumer materials
35 unless the material is a clean recycled material, consists of used
36 electronic parts or controls, or is a used mattress base that is not
37 covered by ticking.
- 38 (2) “Renovate” or “renovation” does not include any of the
39 following:

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

3 (B) Sterilizing or sanitizing a mattress without otherwise altering
4 the mattress.

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

7 (D) Refurbishing that disqualifies a mattress for a yellow
8 wholesale renovator tag to be affixed to the mattress, in accordance
9 with the regulations adopted by the Department of Consumer
10 Affairs.

11 (~~o~~)

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

14 (~~p~~)

15 (*q*) “Retailer” means a person who sells mattresses in the state
16 or offers to a consumer a mattress in the state through any means,
17 including, but not limited to, by remote offering, including sales
18 outlets or catalogs, electronically through the Internet, by
19 telephone, or through the mail.

20 (~~q~~)

21 (*r*) “Sale” or “sell” means the transfer of title of a mattress for
22 consideration, including by a manufacturer, a distributor, or a
23 retailer for eventual consumption to a consumer in the state,
24 including remote sales conducted through sales outlets, catalogs,
25 or the Internet or any other similar electronic means. For purposes
26 of this chapter, a long-term lease of not less than 12 months is the
27 same as a sale.

28 (*s*) “*Solid waste facility*” means a solid waste facility that is
29 permitted to, and accepts under its normal operating conditions,
30 used mattresses from the public for collection, storing, and
31 handling, whether for recycling or disposal.

32 (~~r~~)

33 (*t*) (1) “Ticking” means the outermost layer of fabric or related
34 material of a mattress.

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

38 (~~s~~)

39 (*u*) “Used mattress” means a mattress that has been abandoned
40 or discarded by a consumer.

Article 2. Mattress Recycling Plan

1
 2
 3 42987. (a) (1) On or before July 1, 2014, a qualified industry
 4 association or a successor organization may establish a mattress
 5 recycling organization for purposes of this chapter, which shall be
 6 composed of manufacturers, renovators, and retailers and be
 7 certified pursuant to this section to develop, implement, and
 8 administer the mattress recycling program established pursuant to
 9 this chapter.

10 (2) Within 60 days of receipt of a request for certification, the
 11 department shall notify the requesting qualified industry association
 12 of the department’s decision whether or not to certify that a
 13 mattress recycling organization has been established by the
 14 qualified industry association or successor organization and is
 15 composed of manufacturers, renovators, and retailers for purposes
 16 of establishing the mattress recycling plan.

17 (3) *Prior to certification by the department, the department’s*
 18 *director shall appoint an advisory committee to be part of the*
 19 *mattress recycling organization.*

20 (A) *The advisory committee may be comprised of members of*
 21 *the environmental community, solid waste industry, local*
 22 *government, and public and private representatives involved in*
 23 *the collection, processing and recycling of used mattresses, and*
 24 *other interested parties.*

25 (B) *The mattress recycling organization shall consult the*
 26 *advisory committee at least once during the development and*
 27 *implementation of the plan required pursuant to Section 42987.1,*
 28 *and annually prior to the submittal of both an annual report*
 29 *required pursuant to Section 42990.1 and an annual budget*
 30 *required pursuant to Section 42988.*

31 (b) (1) On or before January 1, 2015, each manufacturer and
 32 renovator shall register with the mattress recycling organization.

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

36 (c) On and after ~~May 1, 2015~~ *January 1, 2016*, a retailer shall
 37 not sell, distribute, or offer for sale a mattress in the state unless
 38 the retailer is in compliance with this chapter and the manufacturer
 39 or renovator of the mattress sold by the retailer is listed in
 40 compliance with this chapter.

1 (d) On and after ~~May 1, 2015~~ *January 1, 2016*, a manufacturer
2 or renovator shall not sell, offer for sale, or import a mattress in
3 this state, or sell or distribute a mattress to a distributor or retailer,
4 unless the manufacturer or renovator is in compliance with this
5 chapter.

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

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

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

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

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

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

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

28 (f) The publishing of an annual report for each calendar year of
29 operation.

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

34 (h) A program performance measurement that shall collect
35 program data for the purpose of the annual report. The information
36 shall include:

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

1 (2) A methodology for determining mattresses sold in the state
2 by the manufacturers and renovators of the mattress recycling
3 organization.

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

11 (j) Entering into contracts or agreements, *which may include*
12 *contracts and agreements with existing nonprofit or for-profit*
13 *recyclers*, that are necessary and proper for the mattress recycling
14 organization to carry out these duties consistent with the terms of
15 this chapter.

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

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

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

30 (n) Providing outreach efforts and education to consumers,
31 manufacturers, and retailers, for the purpose of promoting the
32 recycling of used mattresses *and options available to consumers*
33 *for the free dropoff of used mattresses*.

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

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

1 (o) A provision that allows an individual to drop off, at no
2 charge, a mattress at a mattress recycling center or solid waste
3 facility that is permitted to accept mattresses, and that provides
4 for the payment to a solid waste facility that is permitted to accept
5 mattresses, a reasonable amount for accepting, collecting, storing,
6 and handling used mattresses.

7 (p) A report from the advisory committee, established pursuant
8 to paragraph (3) of subdivision (a) of Section 42987, which
9 includes a summary of the consultative process between the
10 advisory committee and the mattress recycling organization during
11 the development of the plan, as well as any other information
12 deemed pertinent by the advisory committee to maximizing the
13 recovery and recycling of used mattresses in the state.

14 ~~(p)~~

15 (q) Other information requested by the department that is
16 reasonably related to compliance with the recycling plan and that
17 the organization can reasonably compile.

18 42987.2. In preparing the plan pursuant to Section 42987.1,
19 the mattress recycling organization shall consult with interested
20 stakeholders, which shall include, but not be limited to, local
21 government representatives, recyclers, and solid waste industry
22 representatives.

23 42987.3. (a) The department shall review the plan for
24 compliance with this chapter and shall approve, disapprove, or
25 conditionally approve the plan within 90 days of receipt of the
26 plan. If the department fails to act within 90 days of the receipt of
27 the plan, the plan shall be deemed approved.

28 (b) If the department disapproves the plan pursuant to
29 subdivision (a), the department shall explain, in writing, how the
30 plan does not comply with this chapter, and the mattress recycling
31 organization shall resubmit a plan to the department. If the
32 department finds that the plan resubmitted by the organization
33 does not comply with the requirements of this chapter, the mattress
34 recycling organization shall not be deemed in compliance with
35 this chapter until the organization submits a plan that the
36 department finds complies with the requirements of this chapter.

37 (c) The approved plan shall be a public record, except that
38 financial, production, or sales data reported to the department by
39 the mattress recycling organization is not public record for purposes
40 of the California Public Records Act (Chapter 3.5 (commencing

1 with Section 6250) of Division 7 of Title 1 of the Government
 2 Code) and shall not be open to public inspection. The department
 3 may release financial, production, or sales data in summary form
 4 only so the information cannot be attributable to a specific
 5 manufacturer or retailer or to any other entity.

6 42987.4. Within ~~60~~ 90 days after approval or conditional
 7 approval by the department *of the plan*, the mattress recycling
 8 organization shall implement the approved plan.

9 42987.5. (a) (1) On or before January 1, ~~2017~~ 2018, based on
 10 methodology contained in the plan and information contained in
 11 the first annual report, the department, in consultation with the
 12 organization, and after taking into consideration relevant economic
 13 and practical considerations and other information, shall establish
 14 and make public the following:

15 (A) The state mattress recycling baseline amount.

16 (B) The state mattress recycling goals.

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

19 (b) Beginning ~~April 1, 2020~~ July 1, 2019, and annually
 20 thereafter, the annual report required pursuant to Section 42990.1
 21 shall demonstrate the mattress recycling organization's ~~substantial~~
 22 ~~compliance~~ *good faith effort to comply* with the state mattress
 23 recycling goals established pursuant to this section.

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

29
 30 Article 3. Budget

31
 32 42988. On or before July 1, 2015, and on or before July 1
 33 annually thereafter, the mattress recycling organization shall
 34 prepare and submit to the department a proposed used mattress
 35 recycling program budget for the following calendar year that
 36 includes all of the following:

37 (a) Anticipated revenues and costs of implementing the program,
 38 including related programs, projects, contracts, and administrative
 39 expenses.

1 (b) A recommended funding level sufficient to cover the plan's
2 *budgeted* costs and to operate the mattress recycling program over
3 a multiyear period in a prudent and responsible manner.

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

6 42988.1. (a) On or before ~~September~~ *October* 1, 2015, and
7 annually thereafter, the department shall approve or disapprove a
8 final used mattress recycling program budget. If the department
9 fails to act or does not disapprove a final used mattress recycling
10 program budget, the budget shall be deemed approved.

11 (b) (1) If the department disapproves the budget, the mattress
12 recycling organization shall resubmit a revised budget addressing
13 the department's written reasons for its decision within 30 days
14 of the disapproval.

15 (2) The department, within 30 days from the date the mattress
16 recycling organization resubmits a revised budget, shall approve
17 or disapprove a final used mattress recycling program budget. If
18 the department fails to act or does not disapprove a final program
19 budget within those 30 days, the budget shall be deemed approved.

20 42988.2. (a) The department shall notify the mattress recycling
21 organization of the department's costs that are directly related to
22 implementing *and enforcing* this chapter relating to the mattress
23 recycling organization's activities ~~pursuant to this chapter,~~
24 ~~including any. This may include the direct costs incurred in~~
25 ~~certifying the mattress recycling organization and reviewing the~~
26 ~~organization's plan submitted pursuant to associated with~~
27 ~~regulatory development prior to submittal of the plan required~~
28 ~~pursuant to Section 42987.1.~~

29 (b) On or before July 1, ~~2015~~ *2016*, and once every three months
30 thereafter, and within the fiscal year *ending June 30*, the mattress
31 recycling organization shall reimburse the department for costs
32 the department incurs ~~that are directly related to the mattress~~
33 ~~recycling organization's activities pursuant to this chapter~~ *pursuant*
34 *to subdivision (a).* ~~The amount of the reimbursement~~
35 ~~reimbursement shall not exceed the department's direct costs~~
36 ~~incurred by the department to implement and enforce this chapter.~~

37 (c) The department shall deposit all moneys submitted for
38 reimbursement costs by the mattress recycling organization
39 pursuant to this section into the Used Mattress Recycling Account,
40 which is hereby established in the Integrated Waste Management

1 Fund. Upon appropriation by the Legislature, moneys in the
2 account shall be expended by the department to administer and
3 enforce this chapter, *as well as reimburse any outstanding loans*
4 *made from other funds used to finance startup costs of the*
5 *department's activities pursuant to this chapter.* The funds
6 collected pursuant to this section shall not be expended for any
7 other purpose.

8

9

Article 4. Mattress Recycling Charge

10

11 42989. (a) The mattress recycling organization shall set the
12 amount of the mattress recycling charge that shall be added to the
13 purchase price of a mattress at the point of sale and include the
14 charge amount in the annual budget.

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

18 (2) The mattress recycling organization shall set the charge as
19 a flat rate and not as a percentage of the purchase price. The
20 organization shall not set more than two different charges to
21 accommodate mattress size differentials.

22 (c) (1) In the first 12 months during which the mattress
23 recycling charge is collected, the mattress recycling organization
24 may change the amount of the mattress recycling charge, in
25 accordance with subdivision (b), and shall provide no less than 90
26 days' notice to the public before the change in the amount of the
27 charge takes place.

28 (2) After one year from the date when the collection of the
29 mattress recycling charge commences, the mattress recycling
30 organization may change the amount of the charge in accordance
31 with subdivision (b), but the mattress recycling organization shall
32 not change the amount of the charge more frequently than annually,
33 and shall provide no less than 180 days' notice to the public before
34 the change in the amount of the charge takes effect.

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

37 42989.1. (a) Commencing ~~60~~ 90 days after the date the
38 department approves or conditionally approves the plan pursuant
39 to Section 42987.3, each manufacturer, renovator, retailer, or
40 distributor that sells a mattress to a consumer or to the ultimate

1 end user of the mattress in the state shall add the charge to the
2 purchase price of the mattress and shall remit the charge collected
3 to the mattress recycling organization.

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

8 (c) The mattress recycling organization shall develop
9 reimbursement criteria to enable retailers to recover administrative
10 costs associated with collecting the charge.

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

14 42989.2. (a) The mattress recycling organization may conduct
15 an audit of ~~those~~ *the following*:

16 (1) *Those parties that are required to remit the charge to the*
17 *mattress recycling organization to verify that the charges paid are*
18 *proper and accurate and to ensure all parties required by this*
19 *chapter to pay or collect the charge are paying or collecting the*
20 *proper amount.*

21 (2) *Those parties that are exempt from remitting the charge.*

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

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

30 (d) If the mattress recycling organization conducts an audit
31 pursuant to this section, the organization shall provide a copy of
32 the audit to the department.

33 42989.2.1. (a) *Mattresses manufactured by the Prison Industry*
34 *Authority and purchased by the state or its agencies are exempt*
35 *from collecting and remitting the mattress recycling charge and*
36 *from any end of life financial incentive established by the mattress*
37 *recycling organization for used mattresses pursuant to subdivision*
38 *(k) of Section 42987.1. Mattresses sold subject to this exemption*
39 *shall be permanently marked or labeled to clearly identify them*
40 *as having been manufactured by the Prison Industry Authority.*

1 (b) *The Prison Industry Authority shall, upon the request of the*
2 *department or mattress recycling organization, report how many*
3 *mattresses it manufactured and sold in the previous fiscal year*
4 *and the customers that purchased those mattresses. To the extent*
5 *reasonably possible, the Prison Industry Authority, upon request*
6 *by the department or the mattress recycling organization, shall*
7 *report how its customers are disposing of their used mattresses*
8 *and estimate what percentage are being landfilled and recycled*
9 *or renovated.*

10 (c) *The mattress recycling organization's obligation under this*
11 *chapter to recycle mattresses manufactured by the Prison Industry*
12 *Authority is limited to any services for which the authority has*
13 *specifically contracted with the mattress recycling organization*
14 *for that purpose. The mattress recycling organization may refuse*
15 *to recycle or pay financial incentives on any Prison Industry*
16 *Authority-manufactured mattress that is exempted from collecting*
17 *and remitting the mattress recycling fee.*

18 (d) *Mattresses exempt pursuant to subdivision (a) and all*
19 *discards of mattresses previously manufactured by the Prison*
20 *Industry Authority shall be excluded from the goal-setting analysis*
21 *required by Section 42987.5.*

22 42989.3. (a) *The mattress recycling organization shall deposit*
23 *the charges and other moneys collected by the mattress recycling*
24 *organization pursuant to this chapter in accounts that are*
25 *maintained and disbursed by the organization.*

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

31

32 Article 5. Records, Audits, and Annual Report

33

34 42990. (a) *The mattress recycling organization shall keep*
35 *minutes, books, and records that clearly reflect the activities and*
36 *transactions of the mattress recycling organization.*

37 (b) *The accounting books of the mattress recycling organization*
38 *shall be audited at the organization's expense by an independent*
39 *certified public accountant retained by the organization at least*
40 *once each calendar year.*

1 (c) The mattress recycling organization shall arrange for the
2 audit to be delivered to the department, along with the annual
3 report required pursuant to Section 42990.1. The department shall
4 review the audit for compliance with this chapter and consistency
5 with the plan created pursuant to this chapter. The department shall
6 notify the mattress recycling organization of any compliance issues
7 or inconsistencies. The mattress recycling organization may obtain
8 copies of the audit upon request. The department shall not disclose
9 any confidential proprietary information in the audit.

10 (d) The department may conduct its own audit if it determines
11 that an audit is necessary to enforce the requirements of this chapter
12 and that the audit conducted pursuant to subdivision (b) is not
13 adequate for this purpose.

14 42990.1. On or before April 1, ~~2016~~ 2017, and each year
15 thereafter, the mattress recycling organization shall submit to the
16 department and make publicly available on its Internet Web site
17 a report that includes, for the preceding calendar year, all of the
18 following:

- 19 (a) The mattress recycling organization's costs and revenues.
- 20 (b) The quantity of mattresses disposed of in solid waste
21 landfills.
- 22 (c) The quantity of discarded used mattresses collected for
23 recycling in the program.
- 24 (d) The quantity of used mattresses collected for recycling from
25 different categories of sources.
- 26 (e) The quantity of each category of materials recycled.
- 27 (f) The uses for the recycled materials.
- 28 (g) The quantity of otherwise disposed of materials.
- 29 (h) A description of methods used to collect, transport, and
30 process used mattresses in this state.
- 31 (i) Examples of educational materials that were provided to
32 consumers the first year and any changes to those materials in
33 subsequent years.
- 34 (j) The total volume, number, and weight of used mattresses
35 collected recycled, renovated, and reused in this state during the
36 preceding calendar year, including any conversion factor used to
37 determine the number of mattresses recovered.
- 38 (k) *A report by the advisory committee, established pursuant to*
39 *paragraph (3) of subdivision (a) of Section 42987 that includes a*
40 *summary of the consultative process between the advisory*

1 *committee and the mattress recycling organization relating to the*
 2 *ongoing implementation of the plan, as well as any other*
 3 *information deemed pertinent by the advisory committee to*
 4 *maximizing the recovery and recycling of used mattresses in the*
 5 *state.*

6 ~~(k)~~

7 (l) For reports submitted on and after April 1, 2020, a
 8 demonstration of ~~substantial compliance~~ *good faith effort* with the
 9 state mattress recycling goals established pursuant to Section
 10 42987.5.

11 (m) *Any modifications or revisions to the mattress recycling*
 12 *plan submitted pursuant to Section 42987.1, necessary to achieve*
 13 *the statewide mattress recycling goals established pursuant to*
 14 *Section 42987.5.*

15 ~~(t)~~

16 (n) Other information relevant to compliance with the plan.

17 42990.2. No later than 60 days after the date the department
 18 receives the annual report, the department shall notify the mattress
 19 recycling organization of any deficiencies in the report. No later
 20 than 60 days after receiving this notice from the department, the
 21 mattress recycling organization shall provide additional
 22 information, modification, or corrections in response to the
 23 department’s notification.

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) Other information deemed necessary by the department that
 34 is reasonably related to compliance with this chapter and that can
 35 be reasonably compiled.

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

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

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

6

7

Article 7. Retailer Used Mattress Take-back

8

9

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

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

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

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

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

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

31

32

Article 8. Enforcement

33

34

35 42993. (a) On or before March 1, 2015, and annually thereafter,
36 the department shall post on its Internet Web site a list of
37 manufacturers and renovators that are in compliance with this
38 chapter.

39 (b) A manufacturer or renovator that is not listed on the
40 department's Internet Web site pursuant to this section, but
demonstrates compliance with this chapter before the next notice

1 is required to be posted pursuant to this section, may request a
2 certification letter from the department stating the manufacturer
3 or renovator is in compliance. The manufacturer or renovator that
4 receives the letter shall be deemed to be in compliance with this
5 chapter.

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

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

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

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

29 42993.1. (a) The department may impose an administrative
30 civil penalty on any manufacturer, mattress recycling organization,
31 recycler, renovator, or retailer that is in violation of this chapter.
32 The amount of the administrative civil penalty shall not exceed
33 five hundred dollars (\$500) per day, but, if the violation is
34 intentional, knowing, or reckless, the department may impose an
35 administrative civil penalty of not more than five thousand dollars
36 (\$5,000) per day.

37 (b) The department shall not impose a penalty on the mattress
38 recycling organization pursuant to this section for a failure to
39 comply with this chapter if the organization demonstrates it
40 received false or misleading information from a member of the

1 organization or other party that was the direct cause of its failure
2 to comply.

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

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

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

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

24 (c) Require additional reporting requirements relating to
25 compliance with the material requirement identified by the
26 department.

27 42993.3. (a) A manufacturer, renovator, retailer, and mattress
28 recycling organization shall do both of the following:

29 (1) Upon request, provide the department with reasonable and
30 timely access, as determined by the department and as authorized
31 pursuant to Title 13 (commencing with Section 1822.50) of Part
32 3 of the Code of Civil Procedure, to its facilities and operations,
33 as necessary to determine compliance with this chapter.

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

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

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

10
 11
 12

Article 9. Antitrust Immunity

13 42994. (a) Except as provided in subdivision (c), an action
 14 specified in subdivision (b) that is taken by a mattress recycling
 15 organization or its members that relates to any of the following is
 16 not a violation of the Cartwright Act (Chapter 2 (commencing with
 17 Section 16700) of Part 2 of Division 7 of the Business and
 18 Professions Code), the Unfair Practices Act (Chapter 4
 19 (commencing with Section 17000) of Part 2 of Division 7 of the
 20 Business and Professions Code), or the Unfair Competition Law
 21 (Chapter 5 (commencing with Section 17200) of Part 2 of Division
 22 7 of the Business and Professions Code).

23 (b) Subdivision (a) shall apply to all of the following actions
 24 taken by the mattress recycling organization, manufacturer, or
 25 renovator:

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

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

32 (3) The establishment, administration, collection, or
 33 disbursement of the charges associated with funding the
 34 implementation of this chapter.

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

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

- 1 (2) Fixes the output of production of mattresses.
- 2 (3) Restricts the geographic area in which, or customers to
- 3 whom, mattresses will be sold.

O