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SENATE BILL

No. 254

Introduced by Senators Hancock and Correa
(Principal coauthor: Senator Calderon)
(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 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 the provision of a mechanism to local governments and certain solid waste facilities to recover for the recovery of illegally disposed mattresses that is funded, as specified, and reimbursing those solid waste facilities for certain costs specified. The plan would also be required to ensure that it addresses the impact of the requirement of the California Constitution that a local government submit the imposition, extension, or increase in a general or special tax, as defined, to the electorate for approval by a majority or ²/₃ vote, respectively, with regard to local governments participating in the program.~~ 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 costs 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 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

1 manufacturers of mattresses sold in this state to develop, finance,
2 and implement a convenient and cost-effective program to recover
3 and recycle used mattresses generated in this state.

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

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

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

15 42985.1. This chapter shall be known, and may be cited, as the
16 Used Mattress Recovery and Recycling Act.

17

18

Article 1. Definitions

19

20

42986. ~~(a)~~ *For purposes of this chapter, the following
21 definitions shall apply:*

22

(a) (1) “Consumer” means an owner of a mattress, including
23 a person, business, corporation, limited partnership, nonprofit
24 organization, or governmental entity, and including the ultimate
25 purchaser, owner, or lessee of a mattress.

26

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

31

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

34

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

38

(d) “Good faith effort” means all reasonable and economically
39 practical efforts by a mattress recycling organization to implement

1 the components identified in its approved plan consistent with its
2 annual budget.

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

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

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

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

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

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

22 (2) “Mattress” includes a foundation and a renovated mattress
23 or renovated foundation.

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

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

28 (B) A sleeping bag or pillow.

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

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

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

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

38 (h) “Mattress recycling organization” or “organization” means
39 an organization exempt from taxation under Section 501(c)(3) or
40 Section 501(c)(6) of the Internal Revenue Code of 1986, that is

1 established by a qualified industry association, composed of
2 manufacturers, renovators, and retailers, and certified pursuant to
3 Section 42987, to develop, implement, and administer the mattress
4 recycling program established pursuant to this chapter.

5 (i) “Used mattress recovery and recycling plan” or “plan” means
6 the plan for recycling used mattresses that is developed by the
7 mattress recycling organization pursuant to this chapter.

8 (j) “Program” or “used mattress recycling program” means the
9 program implemented by the mattress recycling organization
10 pursuant to a plan approved by the department.

11 (k) “Qualified industry association” means the International
12 Sleep Products Association or a successor of that organization.

13 (l) “Recycle” or “recycling” has the same meaning as defined
14 in Section 40180.

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

19 (n) “Recycling charge” or “charge” means the charge imposed
20 on the sale of a new or renovated mattress at the point of sale and
21 collected by the organization to fund the recycling of used
22 mattresses pursuant to this chapter.

23 (o) (1) “Renovate” or “renovation” means altering a used
24 mattress for the purpose of resale and includes one or more of the
25 following:

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

27 (B) Adding additional filling.

28 (C) Rebuilding a used mattress.

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

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

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

37 (B) Sterilizing or sanitizing a mattress without otherwise altering
38 the mattress.

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

1 (D) Refurbishing that disqualifies a mattress for a yellow
2 wholesale renovator tag to be affixed to the mattress, in accordance
3 with the regulations adopted by the Department of Consumer
4 Affairs.

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

7 (q) “Retailer” means a person who sells mattresses in the state
8 or offers to a consumer a mattress in the state through any means,
9 including, but not limited to, by remote offering, including sales
10 outlets or catalogs, electronically through the Internet, by
11 telephone, or through the mail.

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

19 (s) “Solid waste facility” means, *for purposes of this chapter*,
20 a solid waste facility that is permitted to, and accepts under its
21 normal operating conditions, used mattresses from the public for
22 collection, storing, and handling, whether for recycling or disposal.

23 (t) (1) “Ticking” means the outermost layer of fabric or related
24 material of a mattress.

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

28 (u) “Used mattress” means a mattress that has been abandoned
29 or discarded by a consumer.

30

31

Article 2. Mattress Recycling Plan

32

33 42987. (a) (1) On or before July 1, 2014, a qualified industry
34 association or a successor organization may establish a mattress
35 recycling organization for purposes of this chapter, which shall be
36 composed of manufacturers, renovators, and retailers and be
37 certified pursuant to this section to develop, implement, and
38 administer the mattress recycling program established pursuant to
39 this chapter.

1 (2) Within 60 days of receipt of a request for certification, the
2 department shall notify the requesting qualified industry association
3 of the department's decision whether or not to certify that a
4 mattress recycling organization has been established by the
5 qualified industry association or successor organization and is
6 composed of manufacturers, renovators, and retailers for purposes
7 of establishing the mattress recycling plan.

8 (3) Prior to certification by the department, the department's
9 director shall appoint an advisory committee to be part of the
10 mattress recycling organization.

11 (A) The advisory committee may be comprised of members of
12 the environmental community, solid waste industry, local
13 government, and public and private representatives involved in
14 the collection, processing and recycling of used mattresses, and
15 other interested parties.

16 (B) The mattress recycling organization shall consult the
17 advisory committee at least once during the development and
18 implementation of the plan required pursuant to Section 42987.1,
19 and annually prior to the submittal of both an annual report required
20 pursuant to Section 42990.1 and an annual budget required pursuant
21 to Section 42988.

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

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

27 (c) On and after January 1, 2016, a retailer shall not sell,
28 distribute, or offer for sale a mattress in the state unless the retailer
29 is in compliance with this chapter and the manufacturer or
30 renovator of the mattress sold by the retailer is listed in compliance
31 with this chapter.

32 (d) On and after January 1, 2016, a manufacturer or renovator
33 shall not sell, offer for sale, or import a mattress in this state, or
34 sell or distribute a mattress to a distributor or retailer, unless the
35 manufacturer or renovator is in compliance with this chapter.

36 42987.1. On or before July 1, 2015, the mattress recycling
37 organization shall develop and submit to the department a plan for
38 recycling used mattresses in the state in an economically efficient
39 and practical manner that includes all of the following goals and
40 elements:

- 1 (a) Program objectives consistent with the state’s solid waste
2 management hierarchy.
- 3 (b) The names of manufacturers, renovators, and brands covered
4 under the plan.
- 5 (c) A consultation process with affected stakeholders, including,
6 but not limited to, local government representatives, recyclers, and
7 solid waste industry representatives.
- 8 (d) Methods to increase the number of used mattresses diverted
9 from landfills, reduce the number of illegally dumped used
10 mattresses, and increase the quantity of used materials recovered
11 through this process and recycled for other uses.
- 12 (e) (1) The establishment and administration of a means for
13 funding the plan in a manner that distributes the mattress recycling
14 organization’s costs uniformly over all mattresses sold in the state.
- 15 (2) The funding mechanism shall provide sufficient funding for
16 the mattress recycling organization to carry out the plan, including
17 the administrative, operational, and capital costs of the plan.
- 18 (f) The publishing of an annual report for each calendar year of
19 operation.
- 20 (g) Conducting research, as needed, related to improving used
21 mattress collection, dismantling, and recycling operations,
22 including pilot programs to test new processes, methods, or
23 equipment on a local, regional, or otherwise limited basis.
- 24 (h) A program performance measurement that shall collect
25 program data for the purpose of the annual report. The information
26 shall include:
 - 27 (1) A methodology for estimating the amount of mattresses sold
28 in the state, used mattresses available for collection in the state,
29 and for quantifying the number of used mattresses collected and
30 recycled in the state.
 - 31 (2) A methodology for determining mattresses sold in the state
32 by the manufacturers and renovators of the mattress recycling
33 organization.
 - 34 (i) A description of methods used to coordinate activities with
35 existing used mattress collecting and recycling programs, including
36 existing nonprofit mattress recyclers, and with other relevant parties
37 as appropriate, with regard to the proper management or recycling
38 of discarded or abandoned mattresses, for purposes of providing
39 the efficient delivery of services and avoiding unnecessary
40 duplication of effort and expense.

1 (j) Entering into contracts or agreements, which may include
2 contracts and agreements with existing nonprofit or for-profit
3 recyclers, that are necessary and proper for the mattress recycling
4 organization to carry out these duties consistent with the terms of
5 this chapter.

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

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

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

20 (n) Providing outreach efforts and education to consumers,
21 manufacturers, and retailers, for the purpose of promoting the
22 recycling of used mattresses and options available to consumers
23 for the free dropoff of used mattresses.

24 (o) A provision that allows an individual to drop off, at no
25 charge, a mattress at a mattress recycling center or solid waste
26 facility that is permitted to accept mattresses, and that provides
27 for the payment to a solid waste facility that is permitted to accept
28 mattresses, a reasonable amount for accepting, collecting, storing,
29 and handling used mattresses.

30 (p) *Ensuring that the impact of Article XIII C of the California*
31 *Constitution is addressed for local governments participating in*
32 *the program.*

33 ~~(p)~~

34 (q) A report from the advisory committee, established pursuant
35 to paragraph (3) of subdivision (a) of Section 42987, which
36 includes a summary of the consultative process between the
37 advisory committee and the mattress recycling organization during
38 the development of the plan, as well as any other information
39 deemed pertinent by the advisory committee to maximizing the
40 recovery and recycling of used mattresses in the state.

1 ~~(q)~~

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

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

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

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

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

33 42987.4. Within 90 days after approval or conditional approval
34 by the department of the plan, the mattress recycling organization
35 shall implement the approved plan.

36 42987.5. (a) (1) On or before January 1, 2018, based on
37 methodology contained in the plan and information contained in
38 the first annual report, the department, in consultation with the
39 organization, and after taking into consideration relevant economic

1 and practical considerations and other information, shall establish
2 and make public the following:

3 (A) The state mattress recycling baseline amount.

4 (B) The state mattress recycling goals.

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

7 (b) Beginning July 1, 2019, and annually thereafter, the annual
8 report required pursuant to Section 42990.1 shall demonstrate the
9 mattress recycling organization’s good faith effort to comply with
10 the state mattress recycling goals established pursuant to this
11 section.

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

17
18 Article 3. Budget
19

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

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

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

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

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

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

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

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

8 42988.2. (a) The department shall notify the mattress recycling
9 organization of the department's costs that are directly related to
10 implementing and enforcing this chapter relating to the mattress
11 recycling organization's activities. This may include the direct
12 costs associated with regulatory development prior to submittal
13 of the plan required pursuant to Section 42987.1.

14 (b) On or before July 1, 2016, and once every three months
15 thereafter, and within the fiscal year ending June 30, the mattress
16 recycling organization shall reimburse the department for costs
17 the department incurs pursuant to subdivision (a). The
18 reimbursement shall not exceed the department's direct costs to
19 implement and enforce this chapter.

20 (c) The department shall deposit all moneys submitted for
21 reimbursement costs by the mattress recycling organization
22 pursuant to this section into the Used Mattress Recycling Account,
23 which is hereby established in the Integrated Waste Management
24 Fund. Upon appropriation by the Legislature, moneys in the
25 account shall be expended by the department to administer and
26 enforce this chapter, as well as reimburse any outstanding loans
27 made from other funds used to finance startup costs of the
28 department's activities pursuant to this chapter. The funds collected
29 pursuant to this section shall not be expended for any other purpose.
30

31 Article 4. Mattress Recycling Charge

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

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

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

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

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

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

20 42989.1. (a) Commencing 90 days after the date the department
21 approves or conditionally approves the plan pursuant to Section
22 42987.3, each manufacturer, renovator, retailer, or distributor that
23 sells a mattress to a consumer or to the ultimate end user of the
24 mattress in the state shall add the charge to the purchase price of
25 the mattress and shall remit the charge collected to the mattress
26 recycling organization.

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

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

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

37 42989.2. (a) The mattress recycling organization may conduct
38 an audit of the following:

39 (1) Those parties that are required to remit the charge to the
40 mattress recycling organization to verify that the charges paid are

1 proper and accurate and to ensure all parties required by this
2 chapter to pay or collect the charge are paying or collecting the
3 proper amount.

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

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

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

13 (d) If the mattress recycling organization conducts an audit
14 pursuant to this section, the organization shall provide a copy of
15 the audit to the department.

16 42989.2.1. (a) Mattresses manufactured by the Prison Industry
17 Authority and purchased by the state or its agencies are exempt
18 from collecting and remitting the mattress recycling charge and
19 from any end-of-life financial incentive established by the mattress
20 recycling organization for used mattresses pursuant to subdivision
21 (k) of Section 42987.1. Mattresses sold subject to this exemption
22 shall be permanently marked or labeled to clearly identify them
23 as having been manufactured by the Prison Industry Authority.

24 (b) The Prison Industry Authority shall, upon the request of the
25 department or mattress recycling organization, report how many
26 mattresses it manufactured and sold in the previous fiscal year and
27 the customers that purchased those mattresses. To the extent
28 reasonably possible, the Prison Industry Authority, upon request
29 by the department or the mattress recycling organization, shall
30 report how its customers are disposing of their used mattresses
31 and estimate what percentage are being landfilled and recycled or
32 renovated.

33 (c) The mattress recycling organization's obligation under this
34 chapter to recycle mattresses manufactured by the Prison Industry
35 Authority is limited to any services for which the authority has
36 specifically contracted with the mattress recycling organization
37 for that purpose. The mattress recycling organization may refuse
38 to recycle or pay financial incentives on any Prison Industry
39 Authority-manufactured mattress that is exempted from collecting
40 and remitting the mattress recycling fee.

1 (d) Mattresses exempt pursuant to subdivision (a) and all
2 discards of mattresses previously manufactured by the Prison
3 Industry Authority shall be excluded from the goal-setting analysis
4 required by Section 42987.5.

5 42989.3. (a) The mattress recycling organization shall deposit
6 the charges and other moneys collected by the mattress recycling
7 organization pursuant to this chapter in accounts that are
8 maintained and disbursed by the organization.

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

14
15 Article 5. Records, Audits, and Annual Report

16
17 42990. (a) The mattress recycling organization shall keep
18 minutes, books, and records that clearly reflect the activities and
19 transactions of the mattress recycling organization.

20 (b) The accounting books of the mattress recycling organization
21 shall be audited at the organization's expense by an independent
22 certified public accountant retained by the organization at least
23 once each calendar year.

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

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

37 42990.1. On or before April 1, 2017, and each year thereafter,
38 the mattress recycling organization shall submit to the department
39 and make publicly available on its Internet Web site a report that
40 includes, for the preceding calendar year, all of the following:

- 1 (a) The mattress recycling organization's costs and revenues.
- 2 (b) The quantity of mattresses disposed of in solid waste
- 3 landfills.
- 4 (c) The quantity of discarded used mattresses collected for
- 5 recycling in the program.
- 6 (d) The quantity of used mattresses collected for recycling from
- 7 different categories of sources.
- 8 (e) The quantity of each category of materials recycled.
- 9 (f) The uses for the recycled materials.
- 10 (g) The quantity of otherwise disposed of materials.
- 11 (h) A description of methods used to collect, transport, and
- 12 process used mattresses in this state.
- 13 (i) Examples of educational materials that were provided to
- 14 consumers the first year and any changes to those materials in
- 15 subsequent years.
- 16 (j) The total volume, number, and weight of used mattresses
- 17 collected recycled, renovated, and reused in this state during the
- 18 preceding calendar year, including any conversion factor used to
- 19 determine the number of mattresses recovered.
- 20 (k) A report by the advisory committee, established pursuant
- 21 to paragraph (3) of subdivision (a) of Section 42987 that includes
- 22 a summary of the consultative process between the advisory
- 23 committee and the mattress recycling organization relating to the
- 24 ongoing implementation of the plan, as well as any other
- 25 information deemed pertinent by the advisory committee to
- 26 maximizing the recovery and recycling of used mattresses in the
- 27 state.
- 28 (l) For reports submitted on and after April 1, 2020, a
- 29 demonstration of good faith effort with the state mattress recycling
- 30 goals established pursuant to Section 42987.5.
- 31 (m) Any modifications or revisions to the mattress recycling
- 32 plan submitted pursuant to Section 42987.1, necessary to achieve
- 33 the statewide mattress recycling goals established pursuant to
- 34 Section 42987.5.
- 35 (n) Other information relevant to compliance with the plan.
- 36 42990.2. No later than 60 days after the date the department
- 37 receives the annual report, the department shall notify the mattress
- 38 recycling organization of any deficiencies in the report. No later
- 39 than 60 days after receiving this notice from the department, the
- 40 mattress recycling organization shall provide additional

1 information, modification, or corrections in response to the
2 department’s notification.

3

4 Article 6. Mattress Recycling and Renovating

5

6 42991. (a) On or before April 1, 2016, and annually thereafter,
7 a person that is engaged in business as a recycler or renovator shall
8 submit a report to the department that includes the following:

9 (1) Quantitative information on the number of mattresses
10 received and recycled or renovated in the state during the preceding
11 calendar year.

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

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

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

24

25 Article 7. Retailer Used Mattress Take-back

26

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

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

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

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

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

4
5 Article 8. Enforcement
6

7 42993. (a) On or before March 1, 2015, and annually thereafter,
8 the department shall post on its Internet Web site a list of
9 manufacturers and renovators that are in compliance with this
10 chapter.

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

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

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

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

36 (f) If the department determines a manufacturer or renovator is
37 not in compliance with this chapter, the department shall remove
38 the manufacturer or renovator from the department's Internet Web
39 site pursuant to this section and the manufacturer or renovator shall

1 not sell a mattress in the state until the department determines the
2 manufacturer or renovator is in compliance with this chapter.

3 42993.1. (a) The department may impose an administrative
4 civil penalty on any manufacturer, mattress recycling organization,
5 recycler, renovator, or retailer that is in violation of this chapter.
6 The amount of the administrative civil penalty shall not exceed
7 five hundred dollars (\$500) per day, but, if the violation is
8 intentional, knowing, or reckless, the department may impose an
9 administrative civil penalty of not more than five thousand dollars
10 (\$5,000) per day.

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

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

25 42993.2. Upon a written finding that a manufacturer, mattress
26 recycling organization, renovator, or retailer has not met a material
27 requirement of this chapter, in addition to any other penalties
28 authorized under this chapter, the department may take any of the
29 following actions, after affording the manufacturer, organization,
30 renovator, or retailer a reasonable opportunity to respond to, or
31 rebut, the finding, to ensure compliance with the requirements of
32 this chapter:

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

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

38 (c) Require additional reporting requirements relating to
39 compliance with the material requirement identified by the
40 department.

1 42993.3. (a) A manufacturer, renovator, retailer, and mattress
2 recycling organization shall do both of the following:

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

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

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

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

23

24 Article 9. Antitrust Immunity

25

26 42994. (a) Except as provided in subdivision (c), an action
27 specified in subdivision (b) that is taken by a mattress recycling
28 organization or its members that relates to any of the following is
29 not a violation of the Cartwright Act (Chapter 2 (commencing with
30 Section 16700) of Part 2 of Division 7 of the Business and
31 Professions Code), the Unfair Practices Act (Chapter 4
32 (commencing with Section 17000) of Part 2 of Division 7 of the
33 Business and Professions Code), or the Unfair Competition Law
34 (Chapter 5 (commencing with Section 17200) of Part 2 of Division
35 7 of the Business and Professions Code).

36 (b) Subdivision (a) shall apply to all of the following actions
37 taken by the mattress recycling organization, manufacturer, or
38 renovator:

39 (1) The creation, implementation, or management of a plan
40 approved by the department pursuant to Article 2 (commencing

1 with Section 42987) and the types or quantities of used mattresses
2 recycled or otherwise managed pursuant to a plan, as described in
3 Article 2 (commencing with Section 42987).

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

5 (3) The establishment, administration, collection, or
6 disbursement of the charges associated with funding the
7 implementation of this chapter.

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

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

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

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