

Senate Bill No. 254

Passed the Senate September 12, 2013

Secretary of the Senate

Passed the Assembly September 11, 2013

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2013, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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, 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, retailers, 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, the provision of a mechanism to local governments and certain solid waste facilities for the recovery

of illegally disposed mattresses that is funded, as 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 $\frac{2}{3}$ 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 Fund, which the bill would establish in the State Treasury. The bill would require the department to expend the moneys in the fund, 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 Used Mattress Recycling 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 authorize the department to adopt emergency regulations in a specified manner with regard to establishing a process for the submission of the used mattress recovery and recycling plan to the department, and the approval of that plan, and for the submission of the proposed used mattress recycling program budget to the department, and the approval of the budget by the department.

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.

The people of the State of California do enact as follows:

SECTION 1. Chapter 21 (commencing with Section 42985) is added to Part 3 of Division 30 of the Public Resources Code, to read:

CHAPTER 21. USED MATTRESS RECOVERY AND RECYCLING ACT

42985. (a) The Legislature finds and declares both of the following:

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

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

(b) It is the intent of the Legislature in enacting this chapter that consumers have the opportunity to drop off their used mattresses free of charge and that this chapter will not undermine existing used mattress recycling, resale, refurbishing, and reuse operations that are in compliance with state and federal law.

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

Article 1. Definitions

42986. For purposes of this chapter, the following definitions shall apply:

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

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

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

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

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

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

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

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

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

(2) Except as provided pursuant to paragraph (2) of subdivision (b) of Section 42987, a retailer that brings a mattress into its store

locations from an out-of-state warehouse or distribution center is not a manufacturer.

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

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

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

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

(B) A sleeping bag or pillow.

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

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

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

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

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

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

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

(k) “Qualified industry association” means the International Sleep Products Association or a successor of that organization, or a group of mattress manufacturers that collectively represent at least 35 percent of the volume of mattresses manufactured in the United States.

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

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

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

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

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

(B) Adding additional filling.

(C) Rebuilding a used mattress.

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

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

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

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

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

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

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

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

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

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

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

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

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

Article 2. Mattress Recycling Plan

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

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

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

(A) The advisory committee may be comprised of members of the environmental community, solid waste industry, local

government, and public and private representatives involved in the collection, processing and recycling of used mattresses, and other interested parties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(l) Ensuring, to the maximum extent possible, that urban and rural local governments and participating solid waste facilities that accept mattresses are provided with a mechanism for the recovery

of illegally disposed used mattresses that is funded at no additional cost to the local government or solid waste facility.

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

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

(o) A provision that allows an individual to drop off, at no charge, a mattress at a mattress recycling center, permitted solid waste facility, or other municipal facility that accepts mattresses, and that provides for the payment to a municipal or solid waste facility that accepts mattresses a reasonable amount for accepting, collecting, storing, transporting, and handling used mattresses.

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

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

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

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

42987.3. (a) The department shall review the plan for compliance with this chapter and shall approve, disapprove, or conditionally approve the plan within 90 days of receipt of the

plan. If the department fails to act within 90 days of the receipt of the plan, the plan shall be deemed approved.

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

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

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

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

- (A) The state mattress recycling baseline amount.
- (B) The state mattress recycling goals.

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

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

(c) On or before July 1, 2020, and every four years thereafter, the department shall review, including reviewing for consistency

with Section 41780.01, and update as necessary, the baseline amount and goals to ensure that the program advances the statewide recycling goal.

Article 3. Budget

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

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

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

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

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

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

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

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

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

(c) The department shall deposit all moneys submitted for reimbursement costs by the mattress recycling organization pursuant to this section into the Used Mattress Recycling Fund, which is hereby established in the State Treasury. Upon appropriation by the Legislature, moneys in the fund shall be expended by the department to administer and enforce this chapter, as well as reimburse any outstanding loans made from other funds used to finance startup costs of the department's activities pursuant to this chapter. The funds collected pursuant to this section shall not be expended for any other purpose.

Article 4. Mattress Recycling Charge

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

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

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

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

(2) After one year from the date when the collection of the mattress recycling charge commences, the mattress recycling organization may change the amount of the charge in accordance with subdivision (b), but the mattress recycling organization shall

not change the amount of the charge more frequently than annually, and shall provide no less than 180 days' notice to the public before the change in the amount of the charge takes effect.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The mattress recycling organization may enter into a joint venture, agreements, or contracts with third parties, including, but not limited to, corporations, partnerships, nonprofit entities, and

governmental agencies, to undertake activities on the mattress recycling organization's behalf that are consistent with this chapter.

Article 5. Records, Audits, and Annual Report

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

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

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

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

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

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

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

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

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

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

(f) The uses for the recycled materials.

(g) The quantity of otherwise disposed of materials.

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

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

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

(k) A report by the advisory committee, established pursuant to paragraph (3) of subdivision (a) of Section 42987 that includes a summary of the consultative process between the advisory committee and the mattress recycling organization relating to the ongoing implementation of the plan, as well as any other information deemed pertinent by the advisory committee to maximizing the recovery and recycling of used mattresses in the state.

(l) For reports submitted on and after April 1, 2020, a demonstration of good faith effort with the state mattress recycling goals established pursuant to Section 42987.5.

(m) (1) Any modifications or revisions to the mattress recycling plan including those required pursuant to Section 42987.1, necessary to achieve the statewide mattress recycling goals established pursuant to Section 42987.5.

(2) Any proposed modifications or revisions to the mattress recycling plan are subject to the department review process prescribed in Section 42987.3.

(3) Within 90 days after approval or conditional approval by the department, the mattress recycling organization shall implement the revised plan.

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

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

Article 6. Mattress Recycling and Renovating

42991. (a) On or before July 1, 2017, and annually thereafter, a person that is engaged in business as a recycler or renovator shall submit a report to the department that includes the following:

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

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

(b) For purposes of determining the used mattress recycling rate, on or before July 1, 2017, and annually thereafter, the operator of a solid waste landfill facility operator shall report to the department, if requested, in a form and manner determined by the department, regarding the number of used mattresses received by that facility that were recycled, renovated, or disposed of within the state in the preceding calendar year.

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

Article 7. Retailer Used Mattress Take-back

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

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

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

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

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

Article 8. Enforcement

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

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

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

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

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

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

42993.1. (a) The department may impose an administrative civil penalty on any manufacturer, mattress recycling organization, recycler, renovator, or retailer that is in violation of this chapter.

The amount of the administrative civil penalty shall not exceed five hundred dollars (\$500) per day, but, if the violation is intentional, knowing, or reckless, the department may impose an administrative civil penalty of not more than five thousand dollars (\$5,000) per day.

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

(c) The department shall deposit all penalties collected pursuant to this section into the Mattress Recovery and Recycling Penalty Account, which is hereby created in the Used Mattress Recycling Fund. Upon appropriation by the Legislature, moneys deposited into the Mattress Recovery and Recycling Penalty Account shall be expended by the department to administer and enforce this chapter, including offsetting the costs incurred by the department pursuant to Section 42988.2.

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

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

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

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

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

(1) Upon request, provide the department with reasonable and timely access, as determined by the department and as authorized pursuant to Title 13 (commencing with Section 1822.50) of Part

3 of the Code of Civil Procedure, to its facilities and operations, as necessary to determine compliance with this chapter.

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

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

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

Article 9. Emergency Regulatory Authority

42993.4. (a) (1) The department may adopt emergency regulations to implement this chapter with regard to establishing a process for the submission of the used mattress recovery and recycling plan to the department, and the approval of that plan, pursuant to Section 42987.3 and for the submission of the proposed used mattress recycling program budget to the department, and the approval of the budget by the department, pursuant to Sections 42988 and 42988.1.

(2) The department shall not adopt regulations pursuant to this section with regard to any other provision of this chapter.

(3) This section does not limit the department's authority to adopt regulations pursuant to Section 40502.

(b) The emergency regulations adopted pursuant to this section shall be adopted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and for the purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare.

Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, any emergency regulations adopted by the department pursuant to this section shall be filed with the Office of Administrative Law.

Article 10. Antitrust Immunity

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

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

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

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

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

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

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

(2) Fixes the output of production of mattresses.

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

Approved _____, 2013

Governor