

Introduced by Senator HancockFebruary 21, 2014

An act to amend Sections 42986, 42987, 42987.1, 42990, 42991, 42993.1, 42993.2, 42993.3, and 42993.4 of the Public Resources Code, relating to recycling.

LEGISLATIVE COUNSEL'S DIGEST

SB 1274, as introduced, Hancock. Recycling: used mattresses.

(1) Existing law, the Used Mattress Recovery and Recycling Act, requires a mattress recycling organization to be established by a qualified industry association to develop, implement, and administer a mattress recycling program, including the development of a state plan by July 1, 2015, for recycling used mattresses in the state that includes specified goals and elements. The plan is required to include an element that ensures 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, as provided.

This bill would require that element to ensure that urban and rural local governments and participating permitted solid waste facilities and authorized solid waste operations that accept mattresses are provided with the above mechanism.

The plan is also required to include a provision that allows an individual to drop off a mattress, at no charge, at a mattress recycling center, permitted solid waste facility, or other municipal facility that accepts mattresses, and for the payment of a reasonable amount to that municipal or solid waste facility.

This bill would authorize an individual to also drop off a mattress at a recycler, renovator, authorized solid waste operation, or other municipal facility that accepts mattresses consistent with solid waste regulations. The bill would also require the payment amount to be determined as reasonable by the municipal facility or solid waste facility or operation and the mattress recycling organization.

For purposes of the act, existing law defines a solid waste facility to mean a facility that accepts, under its normal operating conditions, used mattresses from the public for collection, storing, and handling, whether for recycling or disposal.

This bill would instead define a solid waste facility as including a solid waste transfer or processing station, a composting facility, a gasification facility, a transformation facility, an EMSW conversion facility, and a disposal facility, as provided.

(2) The act requires the mattress recycling organization to arrange for an audit conducted by a independent certified public accountant to be delivered to the department, allows the mattress recycling organization to obtain copies of that audit, and prohibits the department from disclosing any confidential proprietary information in the audit. The department is authorized to conduct its own audit if it determines that an audit is necessary. The act also requires a mattress recycler or mattress renovator to submit an annual report to the department, which the department is required to make public.

This bill would instead prohibit the department from disclosing any confidential proprietary information in the audit that the department is authorized to conduct, would instead allow the mattress recycling organization to obtain copies of that audit, and would also prohibit the department from disclosing this confidential information in the annual report submitted by recyclers and renovators.

(3) The act authorizes the department to impose an administrative civil penalty on a manufacturer, organization, recycler, renovator, or retailer in violation of the act and to take other specified enforcement actions. The department is required to deposit these penalties into the Mattress Recovery and Recycling Penalty Account, which is available for expenditure by the department, upon appropriation by the Legislature, to implement and enforce the act and for offsetting certain costs reimbursed by the mattress recycling organization.

This bill would additionally authorize the department to impose civil penalties against distributors and to take those specified enforcement actions against distributors and recyclers. The bill would delete the

authorization for the expenditure of these penalties to offset those reimbursed costs. The bill would also make technical and clarifying changes.

(4) Existing law authorizes the department to adopt emergency regulations relating to the used mattress recovery and recycling plan and the program budget. Existing law prohibits the department from adopting regulations with regard to any other provision of the act.

This bill would prohibit the department from adopting emergency regulations with regard to any other provision of the act.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. Section 42986 of the Public Resources Code is
2 amended to read:

3 42986. For purposes of this chapter, the following definitions
4 shall apply:

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

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

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

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

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

25 (e) “Importer” means a party qualifying as an “importer of
26 record” for purposes of Section 1484(a)(2)(B) of Title 19 of the

1 United States Code, with regard to the import of a finished mattress
2 sold in the state that was manufactured or assembled by a company
3 outside the United States.

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

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

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

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

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

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

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

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

24 (B) A sleeping bag or pillow.

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (B) Adding additional filling.

27 (C) Rebuilding a used mattress.

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

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

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

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

38 (C) Altering a mattress by a renovator when a person retains
39 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, a~~
20 ~~solid waste facility that accepts under its normal operating~~
21 ~~conditions, used mattresses from the public for collection, storing,~~
22 ~~and handling, whether for recycling or disposal. has the same~~
23 ~~meaning as that term is defined in Section 40194.~~

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

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

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

31 SEC. 2. Section 42987 of the Public Resources Code is
32 amended to read:

33 42987. (a) (1) ~~On or before July 1, 2014, a~~ 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~~ *Each* manufacturer,
23 retailer, and renovator shall register with the mattress recycling
24 organization.

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

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

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

37 SEC. 3. Section 42987.1 of the Public Resources Code is
38 amended to read:

39 42987.1. On or before July 1, 2015, the mattress recycling
40 organization shall develop and submit to the department a plan for

1 recycling used mattresses in the state in an economically efficient
2 and practical manner that includes all of the following goals and
3 elements:

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

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

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

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

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

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

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

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

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

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

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

37 (i) A description of methods used to coordinate activities with
38 existing used mattress collecting and recycling programs, including
39 existing nonprofit mattress recyclers, and with other relevant parties
40 as appropriate, with regard to the proper management or recycling

1 of discarded or abandoned mattresses, for purposes of providing
2 the efficient delivery of services and avoiding unnecessary
3 duplication of effort and expense.

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

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

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

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

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

29 (o) A provision that allows an individual to drop off, at no
30 charge, a mattress at a *recycler, renovator, mattress recycling*
31 *center, permitted solid waste facility, authorized solid waste*
32 *operation, or other municipal facility that accepts mattresses*
33 *consistent with state solid waste regulations, and that provides for*
34 *the payment to a municipal or solid waste facility or operation*
35 *that accepts mattresses a reasonable amount an amount determined*
36 *by the municipal or solid waste facility or operation and the*
37 *mattress recycling organization to be reasonable for accepting,*
38 *collecting, storing, transporting, and handling used mattresses.*

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

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

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

14 SEC. 4. Section 42990 of the Public Resources Code is
15 amended to read:

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

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

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

32 (d) The department may conduct its own audit if it determines
33 that an audit is necessary to enforce the requirements of this chapter
34 and that the audit conducted pursuant to subdivision (b) is not
35 adequate for this purpose. *The mattress recycling organization*
36 *may obtain copies of the audit upon request. The department shall*
37 *not disclose any confidential proprietary information in the audit.*

38 SEC. 5. Section 42991 of the Public Resources Code is
39 amended to read:

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

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

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

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

17 (c) The department shall make the information provided pursuant
18 to this section available to interested parties and to the public. *The*
19 *department shall not disclose any confidential proprietary*
20 *information.*

21 SEC. 6. Section 42993.1 of the Public Resources Code is
22 amended to read:

23 42993.1. (a) The department may impose an administrative
24 civil penalty on any manufacturer, mattress recycling organization,
25 *distributor*, recycler, renovator, or retailer that is in violation of
26 this chapter. The amount of the administrative civil penalty shall
27 not exceed five hundred dollars (\$500) per day, but, if the violation
28 is intentional, knowing, or reckless, the department may impose
29 an administrative civil penalty of not more than five thousand
30 dollars (\$5,000) per day.

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

37 (c) The department shall deposit all penalties collected pursuant
38 to this section into the Mattress Recovery and Recycling Penalty
39 Account, which is hereby created in the Used Mattress Recycling
40 Fund. Upon appropriation by the Legislature, moneys deposited

1 into the Mattress Recovery and Recycling Penalty Account shall
2 be expended by the department to administer and enforce this
3 chapter, including offsetting the costs incurred by the department
4 pursuant to Section 42988.2: chapter.

5 SEC. 7. Section 42993.2 of the Public Resources Code is
6 amended to read:

7 42993.2. Upon a written finding that a manufacturer, mattress
8 recycling organization, renovator, *distributor*, *recycler*, or retailer
9 has not met a material requirement of this chapter, in addition to
10 any other penalties authorized under this chapter, the department
11 may take any of the following actions, after affording the
12 manufacturer, organization, renovator, or retailer a reasonable
13 opportunity to respond to, or rebut, the finding, to ensure
14 compliance with the requirements of this chapter:

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

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

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

23 SEC. 8. Section 42993.3 of the Public Resources Code is
24 amended to read:

25 42993.3. (a) A manufacturer, renovator, *distributor*, *recycler*,
26 retailer, and mattress recycling organization shall do both of the
27 following:

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

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

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

39 (c) The department may take disciplinary action against a
40 manufacturer, renovator, *distributor*, *recycler*, retailer, or mattress

1 recycling organization if the manufacturer, renovator, *distributor*,
2 *recycler*, retailer, or mattress recycling organization fails to provide
3 the department with the access required pursuant to this section,
4 including, but not limited to, imposing penalties pursuant to Section
5 42993.1 and posting an immediate notice on the department's
6 Internet Web site pursuant to Section 42993 that the manufacturer
7 or renovator is no longer in compliance with this chapter.

8 SEC. 9. Section 42993.4 of the Public Resources Code is
9 amended to read:

10 42993.4. (a) (1) The department may adopt emergency
11 regulations to implement this chapter with regard to establishing
12 a process for the submission of the used mattress recovery and
13 recycling plan to the department, and the approval of that plan,
14 pursuant to Section 42987.3 and for the submission of the proposed
15 used mattress recycling program budget to the department, and
16 the approval of the budget by the department, pursuant to Sections
17 42988 and 42988.1.

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

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

23 (b) The emergency regulations adopted pursuant to this section
24 shall be adopted in accordance with Chapter 3.5 (commencing
25 with Section 11340) of Part 1 of Division 3 of Title 2 of the
26 Government Code, and for the purposes of that chapter, including
27 Section 11349.6 of the Government Code, the adoption of these
28 regulations is an emergency and shall be considered by the Office
29 of Administrative Law as necessary for the immediate preservation
30 of the public peace, health, safety, and general welfare.
31 Notwithstanding Chapter 3.5 (commencing with Section 11340)
32 of Part 1 of Division 3 of Title 2 of the Government Code, any
33 emergency regulations adopted by the department pursuant to this
34 section shall be filed with the Office of Administrative Law.

O