

AMENDED IN ASSEMBLY AUGUST 31, 2012

AMENDED IN ASSEMBLY AUGUST 24, 2012

AMENDED IN ASSEMBLY AUGUST 13, 2012

AMENDED IN ASSEMBLY AUGUST 7, 2012

AMENDED IN ASSEMBLY JUNE 25, 2012

AMENDED IN SENATE MAY 29, 2012

AMENDED IN SENATE APRIL 25, 2012

AMENDED IN SENATE APRIL 9, 2012

SENATE BILL

No. 1118

Introduced by Senator Hancock

February 17, 2012

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 1118, as amended, Hancock. Solid waste: used mattresses: recycling and recovery.

(1) Existing law requires a retailer of various specified products, such as rechargeable batteries and cell phones, 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 and would define terms for purposes of the act. The bill would require a manufacturer of mattresses sold in this state, individually, collectively, or through a stewardship organization, to provide an interim

plan to the Department of Resources Recycling and Recovery by April 1, 2013, in an electronic format that ensures that the manufacturer will be responsible for the collection and recycling of used mattresses generated by consumers. The bill would require a manufacturer to implement the interim plan by July 1, 2013, and to continue implementation until a stewardship plan is approved, conditionally approved, or disapproved by the department.

The bill would require a manufacturer of mattresses sold in this state, individually, collectively, or through a stewardship organization, to submit a mattress stewardship plan to the department by April 1, 2014. The bill would specify the requirements to be included in the plan, including meeting specified recycling goals. The bill would specify a procedure for the department's approval, disapproval, or conditional approval of a plan.

The bill would require a retailer of mattresses on and after July 1, 2013, to offer the consumer the option of picking up a used mattress, at the time of delivery, at no additional cost to the consumer.

The bill would prohibit a manufacturer or retailer from selling or offering for sale a mattress to any person in this state unless the manufacturer is in compliance with the act and would prohibit a manufacturer from selling a mattress on or after August 1, 2014, if the manufacturer is not covered by an approved or conditionally approved plan. The bill would require the department, by August 1, 2014, except as specified, and by July 1 annually thereafter, to post on its Internet Web site a listing of manufacturers that have submitted a plan and to annually post a listing of manufacturers in compliance with the act. The bill would require retailers that distribute or sell mattresses to monitor the department's Internet Web site to determine if the manufacturer of a mattress is in compliance with the requirements of the act.

The bill would require a manufacturer, individually, collectively, or through a stewardship organization, to submit an annual report to the department describing its mattress stewardship efforts. The bill would require the department to review the annual report within 90 days of receipt and adopt a finding of compliance or noncompliance with the requirements of the act. The bill would authorize the department to require a manufacturer or stewardship organization submitting that annual report that is not meeting the act's requirements, to amend and resubmit the plan and would require the department to remove the manufacturer's name from the listing of manufacturers that are in compliance, until as specified.

The bill would require recyclers and renovators, as defined, to submit an annual report to the department regarding mattresses received and recycled and would require the operator of a solid waste facility to submit an annual report to the department regarding the number of used mattresses received and designated for recycling in the state during the preceding calendar year.

The bill would require a manufacturer to pay the department a quarterly administrative fee, as determined by the department.

The bill would require these fees to be deposited into the Mattress Recovery and Recycling Account, which the bill would establish in the Integrated Waste Management Fund. The bill would provide that the moneys in the account would be available for expenditure by the department, upon appropriation by the Legislature.

The bill would require a manufacturer or stewardship organization to provide the department with reasonable and timely access, as determined by the department, to its facilities or operations, and to provide the department with any relevant records. The bill would require the records to be maintained and accessible for 3 years. The bill would require all reports and records to be provided to the department under penalty of perjury, thereby imposing a state-mandated local program by creating a new crime.

The bill would allow the department to impose an administrative civil penalty in specified amounts on a manufacturer, stewardship organization, or retailer who is in violation of the act. The bill would require the department to deposit all penalties collected into the Mattress Recovery and Recycling Penalty Account, which the bill would establish in the Integrated Waste Management Fund. The bill would provide that the moneys in the penalty account would be available for expenditure by the department, upon appropriation by the Legislature. The bill would also authorize the department to take other actions to enforce the act.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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 all 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 collect, reuse where possible, and recycle used mattresses generated in this state.

(2) Consistent with existing state policy, the program developed and implemented by manufacturers of mattresses sold in this state shall be capable of the recovery and recycling of at least 75 percent of used mattresses generated in this state annually on and after January 1, 2020.

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

(c) This chapter does not prohibit a manufacturer from internalizing the cost of implementing this chapter.

42986. For the purposes of this chapter, the following terms have the following meanings:

(a) "Account" means the Mattress Recovery and Recycling Account established pursuant to Section 42995.

(b) "Consumer" means an owner of a mattress, including a person, business, corporation, limited partnership, nonprofit organization, or governmental entity.

(c) "Interim plan" means a plan provided to the department pursuant to Section 42987.

(d) (1) "Manufacturer" means one of the following persons:

(A) A person who manufactures a mattress and who sells, offers for sale, or distributes the mattress in the state under that person's own name or brand.

(B) If there is no person who sells, offers for sale, or distributes a mattress in the state under the person's own name or brand, the manufacturer of the mattress is the owner or licensee of a trademark or brand under which the mattress is sold or distributed in the state, whether or not the trademark is registered.

(2) A retailer whose name or brand may be on a mattress is not the manufacturer of the mattress, unless the retailer actually made, produced, and assembled that product.

(e) (1) "Mattress" means any resilient material or combination of materials that is enclosed by a twin size or larger mattress ticking, used alone or in combination with other products, and that is intended for or promoted for sleeping upon.

(2) "Mattress" includes any foundation and any renovation.

(3) "Mattress" does not include an unattached mattress pad, unattached mattress topper, sleeping bag, pillow, car bed, carriage, basket, dressing table, stroller, playpen, infant carrier, lounge pad, crib bumper, liquid and gaseous filled ticking including any water bed and air mattress that does not contain upholstery material between the ticking and the mattress core, and upholstered furniture that does not otherwise contain a detachable mattress.

(f) "Mattress stewardship plan" or "plan" means a plan submitted to the department pursuant to Section 42988.

(g) "Recycle" or "recycling" has the same meaning as defined in Section 40180. For the purposes of this chapter renovation shall be considered recycling.

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

(i) (1) "Renovate" or "renovation" means altering a mattress for the purpose of resale and includes any one, or a combination of, the following:

(A) Replacing the mattress ticking or filling.

(B) Adding additional filling.

(C) Rebuilding a mattress.

(D) Replacing components with new or recycled materials.

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

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

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

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

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

9 (j) “Renovator” means a person that renovates used mattresses.

10 (k) “Retailer” means a person who sells mattresses in the state
11 or offers to consumers mattresses in the state through any means,
12 including, but not limited to, by remote offering such as sales
13 outlets or catalogs. “Retailer” does not include the sale of
14 mattresses through the Internet.

15 (l) “Stewardship organization” means a nonprofit organization
16 created by one or more manufacturers to act on behalf of the
17 manufacturer to provide an interim plan to the department pursuant
18 to Section 42987 or to design, submit, and implement a mattress
19 stewardship plan pursuant to Section 42988.

20 (m) “Used mattress” means a mattress that is no longer used
21 for its manufactured purpose.

22 (n) “Voucher” means a promise to a consumer of a new mattress
23 to provide that consumer with a future, no cost take back of a used
24 mattress for recycling, as described in this chapter. The voucher
25 may include a payment, coupon, chit, or other form of paper or
26 electronic authorization that enables the consumer to drop off a
27 used mattress for recycling at any recycling facility or solid waste
28 facility at no cost to the consumer, and which the operator of the
29 facility can then redeem from a manufacturer or the manufacturer’s
30 agent in order to cover the cost of recovery and recycling.

31 42987. (a) On or before April 1, 2013, a manufacturer of
32 mattresses sold in this state shall, individually, collectively, or
33 through a stewardship organization, provide an interim plan to the
34 department in an electronic format.

35 (b) The interim plan shall ensure that the manufacturer will be
36 responsible for the collection and recycling of used mattresses
37 generated by consumers. The interim plan shall include a
38 description of activities that the manufacturer shall undertake as
39 part of the plan and shall require the manufacturer to do ~~all of~~ the
40 following:

1 (1) Ensure that when a new mattress is delivered to a consumer
2 by a retailer, the consumer is given the option of having a used
3 mattress picked up for recycling at the time of delivery, at no
4 additional cost to the consumer or retailer. A retailer may contract
5 out to a third-party entity for the pickup of used mattresses.

6 (2) Ensure that when a new mattress is purchased and picked
7 up by a consumer, the consumer is given a voucher that provides
8 for the dropoff and recycling of a used mattress at a local solid
9 waste or recycling facility at no additional cost to the consumer,
10 retailer, or facility.

11 (3) Otherwise provide consumers with convenient opportunities
12 to properly dispose of their used mattresses.

13 (c) The department shall post the interim plan provided pursuant
14 to this section on its Internet Web site.

15 (d) On and after July 1, 2013, a manufacturer shall implement
16 the interim plan provided pursuant to subdivision (a) and shall
17 continue implementation of the interim plan until the mattress
18 stewardship plan required by Section 42988 is approved,
19 conditionally approved, or disapproved by the department pursuant
20 to Section 42989.

21 (e) A manufacturer shall provide retailers with relevant materials
22 60 days prior to implementation of the interim plan.

23 ~~42988. (a) On or before April 1, 2013, a manufacturer may~~
24 ~~form and join a mattress stewardship organization.~~

25 ~~(b)~~

26 42988. (a) On or before April 1, 2014, a manufacturer shall,
27 individually, collectively, or through a mattress stewardship
28 organization, submit a mattress stewardship plan to the department
29 that meets the requirements of this section.

30 ~~(c)~~

31 (b) A mattress stewardship plan submitted pursuant to this
32 section shall include all of the following elements:

33 (1) Program activities to achieve the used mattress recycling
34 goals established in subdivision ~~(d)~~ (c).

35 (2) Existing and planned used mattress take-back sites or
36 collection locations, including estimated timelines for any planned
37 expansion, if applicable.

38 (3) Program objectives consistent with the state's solid waste
39 management hierarchy, in the following categories, and a
40 description of activities to achieve the program objectives:

- 1 (A) Activities to achieve source reduction and maximize reuse
2 and repair.
- 3 (B) Measures to design mattresses and their components for
4 recyclability.
- 5 (C) Activities or incentives to reduce the number of used
6 mattresses sent to landfills.
- 7 (D) Activities or incentives to prevent and mitigate the illegal
8 disposal of used mattresses, including coordination with local
9 governments and waste haulers.
- 10 (4) Ensure that local governments and solid waste facilities are
11 provided with a mechanism for the recovery of illegally dumped
12 used mattresses at no additional cost to the local government or
13 solid waste facility.
- 14 (5) Arrangements for the pickup of used mattresses that have
15 been accepted at solid waste facilities and for the delivery of those
16 used mattresses to a recycling or refurbishment facility.
- 17 (6) A program performance measurement that would collect
18 program data for purposes of the report required by Section 42991,
19 in accordance with the following:
 - 20 (A) If the department does not provide a methodology for the
21 program performance methodology pursuant to subdivision (e) of
22 Section 42991, the plan shall include a methodology for estimating,
23 with regard to the manufacturers covered by the plan, the amount
24 of mattresses sold in the state and the used mattresses available
25 for collection in the state, and for quantifying the number of used
26 mattresses collected and recycled in the state.
 - 27 (B) The program plan performance measurement may aggregate
28 the total number of mattresses sold and recycled by all participating
29 members in a plan submitted by manufacturers acting collectively
30 or through a stewardship organization.
 - 31 (7) Education and outreach efforts to consumers and other
32 individuals within the supply chain to promote their participation
33 in achieving the purposes of the plan.
 - 34 (8) A consultation process with affected stakeholders.
 - 35 (9) The names of manufacturers and brands covered under the
36 plan.
 - 37 (10) Procedures to ensure implementation of the plan if the
38 manufacturer or the stewardship organization no longer exists due
39 to bankruptcy, dissolution, or similar processes.

1 (11) Reimbursement of solid waste facilities for the reasonable
2 costs of collecting, storing, and processing used mattresses in the
3 implementation of the plan pursuant to this chapter.

4 (12) Policies to ensure there are adequate and convenient
5 opportunities for the collection, acceptance, and recovery for
6 recycling of used mattresses in low-income communities, in
7 accordance with the poverty line annually established by the
8 Secretary of California Health and Human Services pursuant to
9 the federal Omnibus Budget Reconciliation Act of 1981 (Public
10 Law 97-35), as amended.

11 (13) Policies to give priority to recycling facilities that are the
12 closest to the consumer or retailers.

13 (14) A program to ensure that used mattresses recovered by a
14 retailer pursuant to Section 42990 are delivered to a recycling
15 facility or solid waste facility for recycling. A manufacturer or
16 retailer may contract out to a third-party entity for the transportation
17 of used mattresses to such a facility.

18 (15) As an alternative to the requirements of paragraph (14), a
19 requirement that the manufacturer provide a retailer with extra
20 vouchers to provide to a consumer if, when picking up a
21 consumer's mattress upon the purchase of a new mattress, the
22 mattress is infested with a pest or contaminated so that it poses a
23 contamination risk to personnel, new products, or equipment. These
24 vouchers shall be provided at no additional cost to the consumer,
25 retailer, recycling facility, or solid waste facility.

26 ~~(d)~~

27 (c) The plan shall meet the portion of the used mattress recycling
28 goals, for which a manufacturer, individually or collectively,
29 submitting the plan, or by the manufacturers included in a plan
30 submitted by a mattress stewardship organization, are subject to,
31 pursuant to the methodology specified in the plan pursuant to
32 paragraph (6) of subdivision ~~(e)~~ (b):

33 (1) On and after January 1, 2015, recycle not less than 25 percent
34 of used mattresses generated by consumers in the state from the
35 manufacturers included in the plan.

36 (2) On and after January 1, 2017, recycle not less than 50 percent
37 of used mattresses generated by consumers in the state from the
38 manufacturers included in the plan.

(3) On and after January 1, 2020, recycle not less than 75 percent of used mattresses generated by consumers in the state from the manufacturers included in the plan.

~~(e)~~

(d) A manufacturer is deemed to meet the mattress recycling percentile goal specified in subdivision~~(d)~~ (c) if the plan submitted by the manufacturer, or by the stewardship organization formed or joined by the manufacturer, when implemented, collects an amount of mattresses equal to, or greater than, the equivalent portion of the mattresses available for collection, as determined pursuant to subparagraph (A) of paragraph (6) of subdivision~~(e)~~ (b) of the plan.

~~(f)~~

(e) A manufacturer, individually or collectively, or stewardship organization may coordinate with local governments, solid waste facilities, retailers, and mattress recyclers to achieve the purposes of this chapter.

~~(g)~~

(f) The plan shall not require the funding for the plan to be collected from a consumer at the point of collection or discard.

42989. (a) The department shall review the plan submitted pursuant to Section 42988 and within 90 days of receipt shall approve, disapprove, or conditionally approve the plan.

(b) If the department disapproves the plan pursuant to subdivision (a), the manufacturer or stewardship organization shall resubmit the plan to the department. If the manufacturer or stewardship organization does not resubmit a plan, or submits a plan that is not approved or conditionally approved by the department, the department shall remove all manufacturers covered by the plan from the department's Internet Web site pursuant to Section 42992, and a manufacturer so removed from the Internet Web site shall not sell a mattresses in the state until the department approves a plan for that manufacturer.

(c) The approved plan shall be a public record, except that financial, production, or sales data reported to the department by a manufacturer or the stewardship organization is not a 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

1 summary form only that cannot be attributable to a specific
2 manufacturer.

3 42990. (a) On and after July 1, 2013, a retailer shall offer a
4 consumer the option to have a used mattress picked up for recovery
5 at the time of delivery, at no additional cost to the consumer, if a
6 new mattress is delivered to the consumer. A retailer may contract
7 out to a third-party entity for the pickup of used mattresses.

8 (b) This chapter does not prohibit a retailer from charging a
9 consumer an additional cost for delivering a new mattress.

10 42991. (a) On or before April 1, 2015, and each year thereafter,
11 a manufacturer shall, individually, collectively, or through a
12 stewardship organization, submit a report to the department
13 describing the mattress stewardship efforts taken pursuant to the
14 approved or conditionally approved plan. At a minimum, the report
15 shall include all of the following:

16 (1) Quantitative information on progress in achieving the used
17 mattress program activities specified in the plan pursuant to
18 subdivision-~~(b)~~ (a) of Section 42988.

19 (2) A calculation of the plan's progress in achieving the
20 recycling goals specified in subdivision-~~(d)~~ (c) of Section 42988,
21 consistent with the methodology specified in the plan pursuant to
22 paragraph (6) of subdivision-~~(e)~~ (b) of Section 42988.

23 (3) A description of the achievement of program objectives
24 specified in the plan pursuant to paragraph (3) of subdivision-~~(e)~~
25 (b) of Section 42988.

26 (4) The total volume, number, and weight of used mattresses
27 collected, recycled, renovated, and reused, and used for energy
28 recovery in this state during the preceding calendar year, including
29 any conversion factor used to determine the number of mattresses
30 recovered.

31 (5) A description of the methods used to collect, transport, and
32 process used mattresses in this state.

33 (6) Examples of educational materials provided to consumers
34 the first year and any changes to those materials in subsequent
35 years.

36 (7) Any other information relevant to compliance with the plan.

37 (b) The department shall review the annual report required
38 pursuant this section and within 90 days of receipt shall adopt a
39 finding of compliance or noncompliance with this chapter.

1 (c) If the department adopts a finding of noncompliance pursuant
2 to subdivision (b), the department may require the manufacturer
3 or stewardship organization to amend and resubmit the plan within
4 90 days of the department's determination.

5 (d) If the manufacturer or stewardship organization does not
6 resubmit the plan pursuant to subdivision (c), or the department
7 does not approve or conditionally approve the plan submitted to
8 subdivision (c), the department shall post a notice of
9 noncompliance pursuant to Section 42992 and the manufacturers
10 subject to the plan shall not sell a mattress in the state until the
11 department approves a plan.

12 (e) The department may adopt a uniform methodology that shall
13 be used by all manufacturers for purposes of estimating the amount
14 of mattresses sold in the state and the number of used mattresses
15 available for collection in the state, and for quantifying the number
16 of used mattresses collected and recycled in the state.

17 42992. (a) A manufacturer or retailer shall not sell or offer for
18 sale a mattress to any person in this state unless the manufacturer
19 is in compliance with this chapter.

20 (b) (1) On or after August 1, 2014, if a manufacturer is not
21 covered by an approved or conditionally approved plan, the
22 manufacturer shall not sell or offer for sale a mattress in the state.

23 (2) A manufacturer is a covered manufacturer if the
24 manufacturer has submitted a plan, either individually, collectively,
25 or through a stewardship organization, to the department pursuant
26 to Section 42988.

27 (c) (1) On August 1, 2014, or upon the date the plan is approved
28 or conditionally approved by the department, whichever date comes
29 first, and on or before July 1 annually thereafter, the department
30 shall post on its Internet Web site a list of manufacturers for which
31 the department has approved or conditionally approved the plan
32 pursuant to Section 42989.

33 (2) On July 1, 2015, and annually thereafter, the department
34 shall post on its Internet Web site a list of manufacturers for which
35 the department has adopted a finding of compliance with regard
36 to the report filed pursuant to subdivision (b) of Section 42991.

37 (3) A manufacturer that is not listed on the department's Internet
38 Web site pursuant to this section, but demonstrates to the
39 satisfaction of the department that it is in compliance with this
40 chapter before the next notice is required to be posted pursuant to

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

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

13 (5) A retailer may exhaust existing stock in its inventory through
14 sales to the public if the existing stock was purchased when the
15 manufacturer was in compliance with the requirements of this
16 chapter at the time of the existing stock's initial purchase.

17 (d) If the department determines that a manufacturer or
18 stewardship organization is not in compliance with this chapter,
19 the department shall remove the manufacturer or the manufacturers
20 covered by the plan submitted by the stewardship organization
21 from the department's Internet Web site pursuant to this section
22 and the manufacturer shall not sell a mattresses in the state until
23 the department determines that the manufacturer is in compliance
24 with this chapter.

25 42993. (a) On or before April 1, 2015, and each year thereafter,
26 a person that is engaged in business as a recycler shall submit a
27 report to the department that includes, but is not limited to, both
28 of the following:

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

32 (2) Quantitative information on the number of vouchers received
33 from customers in the state in the preceding calendar year, if
34 applicable.

35 (b) On or before April 1, 2015, and each year thereafter, a person
36 who renovates used mattresses shall submit a report to the
37 department, that at a minimum, includes both of the following:

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

1 (2) Quantitative information on the number of vouchers received
2 from customers in California in the preceding calendar year, if
3 applicable.

4 (c) For purposes of determining the recycling rate for a used
5 mattress, on or before April 1, 2015, and each year thereafter, a
6 solid waste landfill facility operator shall report to the department,
7 in a form and manner determined by the department, regarding
8 the number of used mattresses received and designated for
9 recycling or renovation within the state in the preceding calendar
10 year.

11 42994. (a) A manufacturer and a mattress stewardship
12 organization shall do all of the following:

13 (1) Upon request, provide the department with reasonable and
14 timely access, as determined by the department and as authorized
15 pursuant to Title 13 (commencing with Section 1822.50) of Part
16 3 of the Code of Civil Procedure, to its facilities and operations,
17 as necessary to determine compliance with this chapter.

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

20 (3) If a manufacturer or the stewardship organization does not
21 comply with the department's request made pursuant to paragraph
22 (1) or (2), it shall provide the department with a complete
23 explanation for its inability or decision not to comply with that
24 request.

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

29 (c) The department may take disciplinary action against a
30 manufacturer if the stewardship organization or manufacturer fails
31 to provide the department with the access required pursuant to this
32 section, including, but not limited to, imposing penalties pursuant
33 to Section 42996 and posting an immediate notice on the
34 department's Internet Web site pursuant to Section 42292 that the
35 manufacturer is no longer in compliance with this chapter.

36 42995. (a) Each manufacturer, shall pay the department a
37 quarterly administrative fee, as determined by the department.

38 (b) The amount of the administrative fees imposed pursuant to
39 subdivision (a) shall be established by the department in an amount
40 that is sufficient to cover the department's full costs of

1 administering and enforcing this chapter, including any program
2 development costs or regulatory costs incurred by the department
3 prior to the submittal of the plan required by Section 42988.

4 (c) The administrative fees collected pursuant to this section
5 shall be deposited into the Mattress Recovery and Recycling
6 Account, which is hereby established in the Integrated Waste
7 Management Fund. Upon appropriation by the Legislature, moneys
8 in the account shall be expended by the department to administer
9 and enforce this chapter. The fees collected pursuant to this section
10 shall not be expended for any other purpose.

11 42996. (a) The department may impose an administrative civil
12 penalty on any manufacturer or stewardship organization that is
13 in violation of this chapter. The amount of the civil penalty shall
14 not exceed five hundred dollars (\$500) per day, but if the violation
15 is intentional, knowing, or reckless, the department may impose
16 a civil penalty of not more than five thousand dollars (\$5,000) per
17 day.

18 (b) The department may impose an administrative civil penalty
19 on any retailer who is in violation of this chapter. The amount of
20 the civil penalty shall not exceed five hundred dollars (\$500) per
21 day, but if the violation is intentional, knowing, or reckless the
22 department may impose a civil penalty of not more than five
23 thousand dollars (\$5,000) per day.

24 (c) In assessing or reviewing the amount of a civil penalty
25 imposed pursuant to subdivision (a) or (b) for a violation of this
26 chapter, the department or the court shall consider all of the
27 following:

- 28 (1) The nature and extent of the violation.
- 29 (2) The number and severity of the violation or violations.
- 30 (3) The economic effect of the penalty on the violator.
- 31 (4) Whether the violator took good faith measures to comply
32 with this chapter and the period of time over which these measures
33 were taken.
- 34 (5) The willfulness of the violator's misconduct.
- 35 (6) The deterrent effect that the imposition of the penalty would
36 have on both the violator and the regulated community.
- 37 (7) Any other factor that justice may require.

38 (d) If more than one stewardship organization submits a plan
39 pursuant to this chapter, the department shall determine the
40 manufacturer's or retailer's compliance with this chapter in

1 accordance with the plan to which the manufacturer or retailer is
2 subject.

3 (e) The department may impose the administrative civil penalties
4 pursuant to this section in accordance with Chapter 5 (commencing
5 with Section 11500) of Part 1 of Division 3 of Title 2 of the
6 Government Code, except that subdivision (c) of Section 11505
7 of the Government Code shall not apply to the department.

8 (f) The department shall not impose a penalty upon a mattress
9 stewardship organization pursuant to this section for a failure to
10 comply with this chapter as a result of submitting false or
11 misleading information if the stewardship organization
12 demonstrates that it received false or misleading information from
13 a manufacturer that was the direct cause of its failure to comply
14 with this chapter.

15 (g) The department shall deposit all penalties collected pursuant
16 to this section into the Mattress Recovery and Recycling Penalty
17 Account, which is hereby created in the Integrated Waste
18 Management Fund. Upon appropriation by the Legislature, moneys
19 deposited into the Mattress Recovery and Recycling Penalty
20 Account may be expended by the department to implement this
21 chapter.

22 42997. Upon a finding that a manufacturer or stewardship
23 organization has not met a requirement of this chapter, in addition
24 to any other penalties authorized under this chapter, the department
25 may take any of following actions to ensure compliance with the
26 requirements of this chapter:

27 (a) Revoke the manufacturer's or stewardship organization's
28 plan approval, amend an approval or conditional approval to
29 include new conditions, or require the manufacturer or stewardship
30 organization to resubmit the plan.

31 (b) Remove the manufacturer from the department's Internet
32 Web site and list of compliant manufacturers, as specified in
33 subdivision (d) of Section 42992.

34 (c) As a condition for approval of plans submitted by the
35 manufacturer or stewardship organization pursuant to Section
36 42989 after the date of the department's finding, require additional
37 reporting not otherwise required under this chapter, at a frequency
38 determined by the department.

39 42998. (a) Except as provided in subdivision (c), an action
40 specified in subdivision (b) that is taken by a stewardship

1 organization or its members that relates to any of the following is
2 not a violation of the Cartwright Act (Chapter 2 (commencing with
3 Section 16700) of Part 2 of Division 7 of the Business and
4 Professions Code), the Unfair Practices Act (Chapter 4
5 (commencing with Section 17000) of Part 2 of Division 7 of the
6 Business and Professions Code), or the Unfair Competition Law
7 (Chapter 5 (commencing with Section 17200) of Part 2 of Division
8 7 of the Business and Professions Code).

9 (b) Subdivision (a) shall apply to all of the following actions
10 taken by the stewardship organization or a manufacturer:

11 (1) The creation, implementation, or management of a plan
12 approved by the department pursuant to Section 42989 and the
13 types or quantities of used mattresses recycled or otherwise
14 managed pursuant to plan, as described in Section 42988.

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

16 (3) The establishment, administration, or disbursement of the
17 costs associated with funding the implementation of this chapter.

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

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

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

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

27 SEC. 2. No reimbursement is required by this act pursuant to
28 Section 6 of Article XIII B of the California Constitution because
29 the only costs that may be incurred by a local agency or school
30 district will be incurred because this act creates a new crime or
31 infraction, eliminates a crime or infraction, or changes the penalty
32 for a crime or infraction, within the meaning of Section 17556 of
33 the Government Code, or changes the definition of a crime within
34 the meaning of Section 6 of Article XIII B of the California
35 Constitution.