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SENATE BILL

No. 254

Introduced by Senators Hancock and Correa
(Principal coauthor: Senator Calderon)
(Coauthors: Senators Corbett and Leno)
(Coauthor: Assembly Member Garcia)

February 13, 2013

An act to add Chapter 21 (commencing with Section 42985) to Part 3 of Division 30 of the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

SB 254, as amended, Hancock. Solid waste: used mattresses: recycling and recovery.

Existing law requires a retailer of various specified products, such as rechargeable batteries and cellular telephones, sold in the state to have in place a system for the acceptance and collection of those products for reuse, recycling, or proper disposal.

This bill would establish the Used Mattress Recovery and Recycling Act. The bill would authorize a qualified industry association, as defined, to establish a mattress recycling organization, as defined. The bill would authorize the Department of Resources Recycling and Recovery to certify that a mattress recycling organization has been established. The bill would require the mattress recycling organization to develop, implement, and administer a mattress recycling program pursuant to the act. The bill would require manufacturers—and, *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 Account~~ *Fund*, which the bill would establish in the ~~Integrated Waste Management Fund~~ *State Treasury*. The bill would require the department to expend the moneys

in the ~~account~~ *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 ~~Integrated Waste Management~~ *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.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

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

1 CHAPTER 21. USED MATTRESS RECOVERY AND RECYCLING ACT

2
3 42985. (a) The Legislature finds and declares ~~all~~ *both* of the
4 following:

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

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

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

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

25 42985.1. This chapter shall be known, and may be cited, as the
26 Used Mattress Recovery and Recycling Act.

27
28 Article 1. Definitions

29
30 42986. For purposes of this chapter, the following definitions
31 shall apply:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (B) A sleeping bag or pillow.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (B) Adding additional filling.

2 (C) Rebuilding a used mattress.

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

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

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

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

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

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

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

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

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

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

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

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

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

6
7 Article 2. Mattress Recycling Plan
8

9 42987. (a) (1) On or before July 1, 2014, a qualified industry
10 association or a successor organization may establish a mattress
11 recycling organization for purposes of this chapter, which shall be
12 composed of manufacturers, renovators, and retailers and be
13 certified pursuant to this section to develop, implement, and
14 administer the mattress recycling program established pursuant to
15 this chapter.

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

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

26 (A) The advisory committee may be comprised of members of
27 the environmental community, solid waste industry, local
28 government, and public and private representatives involved in
29 the collection, processing and recycling of used mattresses, and
30 other interested parties.

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

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

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

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

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

13 42987.1. On or before July 1, 2015, the mattress recycling
14 organization shall develop and submit to the department a plan for
15 recycling used mattresses in the state in an economically efficient
16 and practical manner that includes all of the following goals and
17 elements:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (l) Ensuring, to the maximum extent possible, that *urban and*
27 *rural* local governments and *participating* solid waste facilities
28 that ~~are permitted to~~ accept mattresses are provided with a
29 mechanism for the recovery of illegally disposed used mattresses
30 that is funded at no additional cost to the local government or solid
31 waste facility.

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

38 (n) Providing outreach efforts and education to consumers,
39 manufacturers, and retailers, for the purpose of promoting the

1 recycling of used mattresses and options available to consumers
2 for the free dropoff of used mattresses.

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

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

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

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

23 42987.2. In preparing the plan pursuant to Section 42987.1,
24 the mattress recycling organization shall consult with interested
25 stakeholders, which shall include, but not be limited to, local
26 government representatives, recyclers, and solid waste industry
27 representatives.

28 42987.3. (a) The department shall review the plan for
29 compliance with this chapter and shall approve, disapprove, or
30 conditionally approve the plan within 90 days of receipt of the
31 plan. If the department fails to act within 90 days of the receipt of
32 the plan, the plan shall be deemed approved.

33 (b) If the department disapproves the plan pursuant to
34 subdivision (a), the department shall explain, in writing, how the
35 plan does not comply with this chapter, and the mattress recycling
36 organization shall resubmit a plan to the department. If the
37 department finds that the plan resubmitted by the organization
38 does not comply with the requirements of this chapter, the mattress
39 recycling organization shall not be deemed in compliance with

1 this chapter until the organization submits a plan that the
2 department finds complies with the requirements of this chapter.

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

12 42987.4. Within 90 days after approval or conditional approval
13 by the department of the plan, the mattress recycling organization
14 shall implement the approved plan.

15 42987.5. (a) (1) On or before January 1, 2018, based on
16 methodology contained in the plan and information contained in
17 the first annual report, the department, in consultation with the
18 organization, and after taking into consideration relevant economic
19 and practical considerations and other information, shall establish
20 and make public the following:

21 (A) The state mattress recycling baseline amount.

22 (B) The state mattress recycling goals.

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

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

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

35 Article 3. Budget

36
37
38 42988. On or before July 1, 2015, and on or before July 1
39 annually thereafter, the mattress recycling organization shall
40 prepare and submit to the department a proposed used mattress

1 recycling program budget for the following calendar year that
2 includes all of the following:

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

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

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

11 42988.1. (a) On or before October 1, 2015, and annually
12 thereafter, the department shall approve or disapprove a final used
13 mattress recycling program budget. If the department fails to act
14 or does not disapprove a final used mattress recycling program
15 budget, the budget shall be deemed approved.

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

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

25 42988.2. (a) The department shall notify the mattress recycling
26 organization of the department's costs that are directly related to
27 implementing and enforcing this chapter relating to the mattress
28 recycling organization's activities. This may include the direct
29 costs associated with regulatory development prior to submittal
30 of the plan required pursuant to Section 42987.1.

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

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

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

8
9 Article 4. Mattress Recycling Charge

10
11 42989. (a) The mattress recycling organization shall set the
12 amount of the mattress recycling charge that shall be added to the
13 purchase price of a mattress at the point of sale and include the
14 charge amount in the annual budget.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(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.

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

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

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

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

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

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

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

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

27 (f) The uses for the recycled materials.

28 (g) The quantity of otherwise disposed of materials.

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

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

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

38 (k) A report by the advisory committee, established pursuant
39 to paragraph (3) of subdivision (a) of Section 42987 that includes
40 a summary of the consultative process between the advisory

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

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

9 (m) (1) Any modifications or revisions to the mattress recycling
10 plan ~~submitted~~ *including those required* pursuant to Section
11 42987.1, necessary to achieve the statewide mattress recycling
12 goals established pursuant to Section 42987.5.

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

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

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

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

27 Article 6. Mattress Recycling and Renovating

28
29
30 42991. (a) On or before ~~April 1, 2016~~ *July 1, 2017*, and
31 annually thereafter, a person that is engaged in business as a
32 recycler or renovator shall submit a report to the department that
33 includes the following:

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

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

1 (b) For purposes of determining the used mattress recycling
2 rate, on or before ~~April 1, 2016~~ *July 1, 2017*, and annually
3 thereafter, the operator of a solid waste landfill facility operator
4 shall report to the department, if requested, in a form and manner
5 determined by the department, regarding the number of used
6 mattresses received by that facility that were recycled, renovated,
7 or disposed of within the state in the preceding calendar year.

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

10
11 Article 7. Retailer Used Mattress Take-back
12

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

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

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

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

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

29
30 Article 8. Enforcement
31

32 42993. (a) On or before March 1, 2015, and annually thereafter,
33 the department shall post on its Internet Web site a list of
34 manufacturers and renovators that are in compliance with this
35 chapter.

36 (b) A manufacturer or renovator that is not listed on the
37 department's Internet Web site pursuant to this section, but
38 demonstrates compliance with this chapter before the next notice
39 is required to be posted pursuant to this section, may request a
40 certification letter from the department stating the manufacturer

1 or renovator is in compliance. The manufacturer or renovator that
2 receives the letter shall be deemed to be in compliance with this
3 chapter.

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

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

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

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

27 42993.1. (a) The department may impose an administrative
28 civil penalty on any manufacturer, mattress recycling organization,
29 recycler, renovator, or retailer that is in violation of this chapter.
30 The amount of the administrative civil penalty shall not exceed
31 five hundred dollars (\$500) per day, but, if the violation is
32 intentional, knowing, or reckless, the department may impose an
33 administrative civil penalty of not more than five thousand dollars
34 (\$5,000) per day.

35 (b) The department shall not impose a penalty on the mattress
36 recycling organization pursuant to this section for a failure to
37 comply with this chapter if the organization demonstrates it
38 received false or misleading information from a member of the
39 organization or other party that was the direct cause of its failure
40 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 ~~Integrated Waste Management Fund~~ *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

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

8
9 *Article 9. Emergency Regulatory Authority*

10
11 *42993.4. (a) (1) The department may adopt emergency*
12 *regulations to implement this chapter with regard to establishing*
13 *a process for the submission of the used mattress recovery and*
14 *recycling plan to the department, and the approval of that plan,*
15 *pursuant to Section 42987.3 and for the submission of the proposed*
16 *used mattress recycling program budget to the department, and*
17 *the approval of the budget by the department, pursuant to Sections*
18 *42988 and 42988.1.*

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

35
36 *Article 9:10. Antitrust Immunity*

37
38 *42994. (a) Except as provided in subdivision (c), an action*
39 *specified in subdivision (b) that is taken by a mattress recycling*
40 *organization or its members that relates to any of the following is*

1 not a violation of the Cartwright Act (Chapter 2 (commencing with
2 Section 16700) of Part 2 of Division 7 of the Business and
3 Professions Code), the Unfair Practices Act (Chapter 4
4 (commencing with Section 17000) of Part 2 of Division 7 of the
5 Business and Professions Code), or the Unfair Competition Law
6 (Chapter 5 (commencing with Section 17200) of Part 2 of Division
7 7 of the Business and Professions Code).

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

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

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

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

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

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

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

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