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**CITY OF OAKLAND**  
**BILL ANALYSIS**



Date: May 23, 2013

Bill Number: **SB 254 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: USED  
MATTRESSES: RECYCLING AND RECOVERY**

Bill Author: Hancock and Correa

**DEPARTMENT INFORMATION**

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**RECOMMENDED POSITION: STRONG SUPPORT**

**Summary of the Bill**

SB 254 would require a mattress recycling organization to develop and implement a manufacturer and retailer stewardship program to recover and recycle used mattresses.

This bill would establish the Used **M**attress Recovery and Recycling Act (act). Specifically, the act would:

- By July 1, 2014, allow a qualified industry or association to request to be certified as a mattress recycling organization (organization) by CalRecycle.
- By January 1, 2015, require that all manufacturers and retailers of mattresses offered for sale in California register with the organization.
- Require the organization to develop and submit to CalRecycle, for approval, a plan for recycling used mattresses, and means to fund that plan, by April 1, 2015.
- Require the organization to annually submit a budget to CalRecycle beginning July 1, 2015.
- Require the organization to reimburse CalRecycle for all its cost in implementing the act on a quarterly basis.
- Require the organization to establish a mattress recycling charge that shall be added to the purchase price of a mattress at the point of sale. Any retailer that sells a mattress to a consumer shall collect the charge then remit it to the organization.
- Require CalRecycle to place specific information about the organization and the program on its website.

- Require a retailer, beginning July 1, 2014, to offer consumers the option to have a used mattress picked up for recovery, at no cost to the consumer, at the time of delivery of a new mattress.
- Allow CalRecycle to impose an administrative civil penalty for violations of this act. All penalties shall be deposited into the Mattress Recovery and Recycling Penalty Account within the Integrated Waste Management Fund and may be expended, upon appropriation by the Legislature, to administer and enforce the act.

### **Positive Factors for Oakland**

Illegal dumping is the number one community complaint received by the Public Works Call Center. A large portion of the illegal dumping is abandoned mattresses. Between January 1<sup>st</sup> 2013 and April 30<sup>th</sup> of this year Public Works staff have picked up 670 mattresses. One crew for the pick-up and retrieval of illegal dumping costs the city \$500,000 a year. At any given time the city has a minimum of 8 crews working.

The creation of a manufacturer and retailer stewardship program will create incentives for the private sector to recover and recycle used mattresses, significantly alleviating the pressures that come to bear on individual municipalities like the City of Oakland.

### **Negative Factors for Oakland**

None noted

### **PLEASE RATE THE EFFECT OF THIS MEASURE ON THE CITY OF OAKLAND:**

- Critical** (top priority for City lobbyist, city position required ASAP)
- Very important** (priority for City lobbyist, city position necessary)
- Somewhat Important** (City position desirable if time and resources are available)
- Minimal or**  **None** (do not review with City Council, position not required)

### **Known support:**

Californians Against Waste (sponsor)  
City and County of San Francisco  
City of Oakland  
City of Richmond  
International Sleep Products Association



*California*  
LEGISLATIVE INFORMATION

**SB-254 Solid waste: used mattresses: recycling and recovery.** (2013-2014)

**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.** The Legislature finds and declares both of the following:

(a) 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 and retailers of mattresses sold in this state to develop, finance, and implement a convenient and cost-effective program to recover and recycle used mattresses generated in this state.

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

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

**Article 1. Definitions**

**42986.** (a) (1) "Consumer" means an owner of a mattress, including a person, business, corporation, limited partnership, nonprofit organization, or governmental entity, and including the ultimate purchaser, owner, or lessee of a mattress.

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

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

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

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

(e) "Manufacturer" means any of the following:

(1) The person who manufactures the covered product and who sells, offers for sale, or distributes that product in the state.

(2) If there is no person who is a manufacturer of the product for purposes of paragraph (1), the manufacturer of the covered product is the person who imports the product into the state for sale or distribution.

(3) A manufacturer includes a renovator

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

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

(3) "Mattress" does not include the following:

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

- (B) A sleeping bag or pillow.
- (C) A car bed, crib, or bassinet mattress.
- (D) Juvenile products, including a carriage, basket, dressing table, stroller, playpen, infant carrier, lounge pad, or crib bumper, and the pads for those juvenile products.
- (E) A product containing liquid- and gaseous-filled ticking, including a water bed and air mattress that does not contain upholstery material between the ticking and the mattress core.
- (F) Upholstered furniture that does not otherwise contain a detachable mattress.
- (g) "Mattress recycling organization" or "organization" means an organization exempt from taxation under Section 501(c)(3) or Section 501(c)(6) of the Internal Revenue Code of 1986, that is established by a qualified industry association, composed of manufacturers and retailers, and certified pursuant to Section 42987, to develop, implement, and administer the mattress recycling program established pursuant to this chapter.
- (h) "Used mattress recovery and recycling plan" or "plan" means the plan for recycling used mattresses that is developed by the mattress recycling organization pursuant to this chapter.
- (i) "Program" or "used mattress recycling program" means the program implemented by the mattress recycling organization pursuant to a plan approved by the department.
- (j) "Qualified industry organization" means the International Sleep Products Association, a successor of that organization, or a group of mattress manufacturers that collectively represent at least 35 percent of the volume of mattresses manufactured in the United States.
- (k) "Recycle" or "recycling" has the same meaning as defined in Section 40180.
- (l) "Recycler" means a person that engages in the manual or mechanical separation of mattresses to substantially recover components and commodities contained in mattresses for the purpose of reuse or recycling.
- (m) "Recycling charge" or "charge" means the charge imposed on the sale of a new or renovated mattress at the point of sale and collected by the organization to fund the recycling of used mattresses pursuant to this chapter
- (n) (1) "Renovate" or "renovation" means altering a used mattress for the purpose of resale and includes one or more of the following:
- (A) Replacing the mattress, ticking, or filling.
  - (B) Adding additional filling.
  - (C) Rebuilding a used mattress.
  - (D) Replacing components with new or postconsumer materials unless the material is a clean recycled material, consists of used electronic parts or controls, or is a used mattress base that is not covered by ticking.
- (2) "Renovate" or "renovation" does not include any of the following:
- (A) Stripping a mattress of its ticking or filling without adding new material.
  - (B) Sterilizing or sanitizing a mattress without otherwise altering the mattress.
  - (C) Altering a mattress by a renovator when a person retains the altered mattress for lease, rental, or personal use.
  - (D) Refurbishing that disqualifies a mattress for a yellow wholesale renovator tag to be affixed to the mattress, in accordance with the regulations adopted by the Department of Consumer Affairs.
- (o) "Renovator" means a person who renovates used mattresses.
- (p) "Retailer" means a person who sells mattresses in the state or offers to a consumer a mattress in the state through any means, including, but not limited to, by remote offering, including sales outlets or catalogs, electronically through the Internet, by telephone, or through the mail.
- (q) "Sale" or "sell" means the transfer of title of a mattress for consideration, including by a manufacturer, a distributor, or a retailer for eventual consumption to a consumer in the state, including remote sales conducted through sales outlets, catalogs, or the Internet or any other similar electronic means. For purposes of this chapter, a long-term lease of not less than 12 months is the same as a sale.

(r) (1) "Ticking" means the outermost layer of fabric or related material of a mattress.

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

(s) "Used mattress" means a mattress that has been discarded by a consumer

#### Article 2. Mattress Recycling Plan

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

(2) Within 60 days of receipt of a request for certification, the department shall notify the requesting qualified industry association of the department's decision whether or not to certify that association.

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

(c) On and after January 1, 2015, a retailer shall not sell, distribute, or offer for sale a mattress in the state unless the retailer is in compliance with this chapter and the manufacturer of the mattress sold by the retailer is listed in compliance with this chapter.

(d) On and after January 1, 2015, a manufacturer shall not manufacture, assemble, or import a new mattress in this state, or sell or distribute a mattress to a distributor or retailer, unless the manufacturer is in compliance with this chapter.

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

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

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

(c) A consultation process with affected stakeholders.

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

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

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

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

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

(h) Establishing a methodology for the purpose of determining the state mattress recycling goal.

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

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

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

(j) Coordinating activities with existing used product collecting and recycling plans for discarded mattresses or other products, and other relevant parties as appropriate, to provide efficient delivery of services and avoid unnecessary duplication of effort and expense.

(k) Entering into contracts or agreements that are necessary and proper for the mattress recycling organization

to carry out these duties consistent with the terms of this chapter

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

(m) Ensuring local governments and solid waste facilities are provided with a mechanism for the recovery of illegally dumped used mattresses at no additional cost to the local government or solid waste facility.

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

(o) Ensuring used mattresses recovered by a retailer are delivered to a recycling facility or solid waste facility for recycling.

(p) Providing outreach efforts and education to consumers, manufacturers, and retailers, for the purpose of promoting the recycling of used mattresses.

(q) Procedures to ensure implementation of the plan if a manufacturer or the mattress recycling organization no longer exists due to bankruptcy, dissolution, or similar processes.

(r) (1) Ensuring solid waste facilities offer individuals free drop-off of used mattresses.

(2) Reimbursement of solid waste facilities for the reasonable costs incurred of collecting, storing, and processing used mattresses in paragraph (1).

(s) Any information deemed necessary by the department related to compliance with the plan.

**42987.2.** In preparing the plan pursuant to Section 42987.1, the mattress recycling organization shall consult with interested stakeholders.

**42987.3.** (a) The department shall review the plan and shall approve, disapprove, or conditionally approve the plan within 90 days of receipt of the plan.

(b) If the department disapproves the plan pursuant to subdivision (a), the mattress recycling organization shall resubmit a plan to the department. If the mattress recycling organization does not resubmit a plan, or submits a plan that is not approved or conditionally approved by the department, the mattress recycling organization shall be deemed not in compliance with this chapter

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

**42987.4.** Within 30 days after approval or conditional approval by the department, the mattress recycling organization shall implement the approved plan.

**42987.5.** (a) On or before January 1, 2017, based on methodology contained in the plan and information contained in the first annual report, the department shall establish and make public the following:

(1) The state mattress recycling baseline amount.

(2) The state mattress recycling goals.

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

#### Article 3. Budget

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

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

(b) A recommended funding level sufficient to cover the plan's costs and to operate the mattress recycling

program over a multiyear period in a prudent and responsible manner.

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

**42988.1.** (a) On or before September 1, 2015, and annually thereafter, the department shall approve, disapprove, or conditionally approve a final program budget.

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

(2) The department, within 30 days from the date the mattress recycling organization resubmits a revised budget, shall approve, disapprove, or conditionally approve a final program budget.

**42988.2.** (a) The department shall notify the mattress recycling organization of the department's costs in implementing this chapter relating to the mattress recycling organization's activities pursuant to this chapter.

(b) On or before July 1, 2015, and once every three months thereafter, and within the fiscal year, the mattress recycling organization shall reimburse the department for costs the department incurs related to the mattress recycling organization's activities pursuant to this chapter.

(c) The department shall deposit all moneys submitted for reimbursement costs by the mattress recycling organization pursuant to this section into the Used Mattress Recycling Account, which is hereby established in the Integrated Waste Management Fund. Upon appropriation by the Legislature, moneys in the account shall be expended by the department to administer and enforce this chapter. The funds collected pursuant to this section shall not be expended for any other purpose.

#### **Article 4. Mattress Recycling Charge**

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

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

(c) Changes in the charges shall be made public by the mattress recycling organization 60 days before taking effect.

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

**42989.1.** (a) Each manufacturer, retailer, or distributor that sells a mattress to a consumer or to the ultimate end user of the mattress in the state shall add the charge to the purchase price of the mattress and shall remit the charge collected to the mattress recycling organization.

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

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

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

**42989.2.** (a) The mattress recycling organization may conduct an audit of those parties that are required to remit the charge to the mattress recycling organization to verify that the charges paid are proper and accurate and to ensure all parties required by this chapter to pay or collect the charge are paying or collecting the proper amount.

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

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

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

**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 books of the mattress recycling organization shall be audited at the organization's expense by a certified public accountant retained by the organization and approved by the department at least once each calendar year.*

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

**42990.1.** *On or before April 1, 2016, and each year thereafter, the mattress recycling organization shall submit to the department and make publicly available on its Internet Web site a report that includes, for the preceding calendar year, all of the following:*

- (a) The mattress recycling organization's costs and revenues.*
- (b) The quantity of mattresses disposed of in solid waste landfills, which shall be provided by the department to interested parties.*
- (c) The quantity of discarded used mattresses collected for recycling in the program.*
- (d) The quantity of used mattresses collected for recycling from different categories of sources.*
- (e) The quantity of each category of materials recycled.*
- (f) The uses for the recycled materials.*
- (g) The quantity of otherwise disposed of materials.*
- (h) A description of methods used to collect, transport, and process waste mattresses in this state.*
- (i) Examples of educational materials that were provided to consumers the first year and any changes to those materials in subsequent years.*
- (j) The total volume, number, and weight of used mattresses collected, recycled, renovated, and reused in this state during the preceding calendar year, including any conversion factor used to determine the number of mattresses recovered.*
- (k) Other information relevant to compliance with the plan.*

**Article 6. Mattress Recycling and Renovating**

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

- (1) Quantitative information on the number of mattresses received and recycled or renovated in the state during the preceding calendar year.*
- (2) Any information deemed necessary by the department related to compliance with this chapter.*

*(b) For purposes of determining the recycling rate for a used mattress, on or before April 1, 2016, and annually thereafter, a solid waste landfill facility operator shall report to the department, in a form and manner determined by the department, regarding the number of used mattresses received and designated for recycling or renovation within the state in the preceding calendar year*

**Article 7. Retailer Used Mattress Take-back**

**42992.** *On and after July 1, 2014, a retailer shall offer a consumer the option to have a used mattress picked up for recovery at the time of delivery, at no additional cost to the consumer, if a new mattress is delivered to the consumer.*



**Article 8. Enforcement**

**42993.** (a) On or before July 1, 2016, and annually thereafter, the department shall post on its Internet Web site a list of manufacturers and retailers that are in compliance with this chapter.

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

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

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

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

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

(c) The department shall deposit all penalties collected pursuant to this section into the Mattress Recovery and Recycling Penalty Account, which is hereby created in the Integrated Waste Management Fund. Upon appropriation by the Legislature, moneys deposited into the Mattress Recovery and Recycling Penalty Account may be expended by the department to administer and enforce this chapter.

**42993.2.** Upon finding that a manufacturer, mattress recycling organization, or retailer has not met a requirement of this chapter, in addition to any other penalties authorized under this chapter, the department may take any of the following actions to ensure compliance with the requirements of this chapter:

(a) Revoke the mattress recycling organization's plan approval, amend an approval or conditional approval to include new conditions, or require the mattress recycling organization to resubmit the plan.

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

(c) Require additional reporting requirements.

**42993.3.** (a) A manufacturer 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 or mattress recycling organization if the manufacturer or mattress recycling organization fails to provide the department with the access required pursuant to this section, including, but not limited to, imposing penalties pursuant to Section 42993.1 and posting an immediate notice on the department's Internet Web site pursuant to Section 42993 that the manufacturer is no longer in compliance with this chapter.

**Article 9. Antitrust Immunity**

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

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

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

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

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

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

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

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

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

**Senate Appropriations Committee Fiscal Summary**  
**Senator Kevin de León, Chair**

**SB 254 (Hancock and Correa) – Solid waste: used mattresses: recycling and recovery.**

Amended: April 15, 2013

Policy Vote: EQ 6-3

Urgency: No

Mandate: No

Hearing Date: April 29, 2013

Consultant: Marie Liu

This bill meets the criteria for referral to the **Suspense File**.

**Bill Summary:** SB 254 would require a mattress recycling organization to develop and implement a manufacturer and retailer stewardship program to recover and recycle used mattresses.

**Fiscal Impact:**

- Ongoing costs of approximately \$500,000 to the Integrated Waste Management Fund (Special Fund) in FY 2014-15 first to draft regulations and guidance documents and for review and certification of the mattress recycling organization and its plan then for ongoing oversight and enforcement.
- Ongoing revenues of approximately \$500,000 to the Used Mattress Recycling Account beginning in FY 2015-16 for reimbursement of state costs.

**Background:** The Product Stewardship for Carpets Program requires manufactures of carpet sold in California to submit a carpet product stewardship plan to the Department of Resources Recycling and Recovery (CalRecycle) that demonstrates how it will manage waste carpet. A similar program also exists for paint under the Architectural Paint Recovery Program.

**Proposed Law:** This bill would establish the Used Mattress Recovery and Recycling Act (act). Specifically, the act would:

- By July 1, 2014, allow a qualified industry or association to request to be certified as a mattress recycling organization (organization) by CalRecycle.
- By January 1, 2015, require that all manufacturers and retailers of mattresses offered for sale in California register with the organization.
- Require the organization to develop and submit to CalRecycle, for approval, a plan for recycling used mattresses, and means to fund that plan, by April 1, 2015.
- Require the organization to annually submit a budget to CalRecycle beginning July 1, 2015.
- Require the organization to reimburse CalRecycle for all its cost in implementing the act on a quarterly basis.
- Require the organization to establish a mattress recycling charge that shall be added to the purchase price of a mattress at the point of sale. Any retailer that sells a mattress to a consumer shall collect the charge then remit it to the organization.
- Require CalRecycle to place specific information about the organization and the program on its website.

- Require a retailer, beginning July 1, 2014, to offer consumers the option to have a used mattress picked up for recovery, at no cost to the consumer, at the time of delivery of a new mattress.
- Allow CalRecycle to impose an administrative civil penalty for violations of this act. All penalties shall be deposited into the Mattress Recovery and Recycling Penalty Account within the Integrated Waste Management Fund and may be expended, upon appropriation by the Legislature, to administer and enforce the act.

Related Legislation: SB 1118 (Hancock, 2012) would have established mattress recycling goals for the state. SB 1118 failed passage on the Senate Floor.

Staff Comments: Based on CalRecycle's experience with other extended producer responsibility programs, the department believes that its costs will be approximately \$500,000 for two Integrated Waste Management Specialists, one Staff Programmer Analyst, one Accounting Officer, and a half Staff Counsel position first to develop the program and associated regulations and guidance documents. Later, these positions would then be needed for oversight and enforcement activities including creating, maintaining, and publishing a database for compliant manufactures and reviewing annual reports.

This bill intends to be cost neutral to the state by requiring the organization to reimburse CalRecycle for its costs on a quarterly basis. However, there are certain initial costs that will occur before there is an organization that CalRecycle can request reimbursement from (such as certifying the organization) or before the organization has generated funds to pay for any reimbursements (such as reviewing the initial recovery and recycling plan and associated budget). Staff believes clarification is needed on whether these initial costs are intended to be paid by the industry, and if so, how. Staff notes that initial costs can be covered with an upfront fee, such as an application fee.

This bill would direct any assessed penalties to be used to help fund the administration and enforcement of the act. Staff notes that generally allowing program implementation to be paid for by fines and penalties can be a perverse incentive, or at least create the illusion of a perverse incentive, for overly aggressive enforcement. However, because this bill requires CalRecycle's ongoing costs to be fully reimbursable by the organization, there would be no incentive for overly aggressive enforcement.



- 5) Pursuant to the Architectural Paint Recovery Program, requires architectural paint manufacturers to develop and implement a program to manage waste latex paint. (§48700 et seq.).
- 6) Pursuant to the Mercury Thermostat Collection Act of 2008, requires manufacturers of mercury-added thermostats sold in this state before January 1, 2006, to establish and maintain a collection, transportation, recycling, and disposal program for out-of-service mercury-added thermostats. (Health and Safety Code §25214.8.10 et seq.).

This bill establishes the Used Mattress Recovery and Recycling Act (Act), and does the following:

- 1) Requires a mattress recycling organization to develop and submit to CalRecycle for approval a plan for recycling used mattresses in the state by April 1, 2015.
- 2) Requires CalRecycle to review and approve, disapprove, or conditionally approve the plan within 90 days of receipt of the plan.
- 3) Requires the mattress recycling organization to begin implementing the used mattress recycling plan within 30 days of CalRecycle's approval or conditional approval of the plan.
- 4) By January 1, 2017, requires CalRecycle to establish a state mattress recycling baseline amount and state mattress recycling goal, which are based on the methodology contained in the organization's plan and the data contained in the organization's first annual report.
- 5) Requires CalRecycle to review, and update as necessary, the baseline amount and goals to ensure that the program advances the statewide recycling goal beginning July 1, 2020, and every four years thereafter.
- 6) Requires the mattress recycling organization to prepare a proposed used mattress recycling program budget by July 1, 2015, and annually thereafter. Requires CalRecycle to approve, disapprove, or conditionally approve a final budget by September 1, 2015, and annually thereafter.

- 7) Authorizes a mattress recycling organization to establish a recycling charge imposed on the sale of a mattress at the point of sale.
- 8) Requires the mattress recycling organization to use the revenue generated by the recycling charge to fund a program for the purpose of recycling used mattresses in the state.
- 9) Requires the mattress recycling organization to maintain minutes, books, and records reflecting the activities and transactions of the organization.
- 10) Authorizes the mattress recycling organization to conduct audits on parties required to remit the recycling charge to the organization.
- 11) Requires the organization, mattress recyclers and renovators to submit an annual report, which includes specified information, to CalRecycle beginning April 1, 2016.
- 12) Requires retailers to offer a consumer the option of having a used mattress picked up for recovery at the time of delivery of a new mattress to the consumer beginning July 1, 2014.
- 13) Requires CalRecycle to post on its website a list of manufacturers and retailers who are in compliance with the Act.
- 14) Authorizes CalRecycle to impose administrative civil penalties on any entity that is not in compliance with the Act.
- 15) Authorizes the organization to enter into joint ventures, agreements, and contracts with third parties for purposes of implementing the program.
- 16) Contains definitions for various terms.

**COMMENTS:**

- 1) Purpose of bill. More communities are experiencing increased numbers of illegally dumped mattresses. The accumulation of these used mattresses in public spaces, especially if left for long periods of time, can pose a serious public health problem. Used mattresses can be a breeding ground for mold and pests. This bill is intended to reduce illegal dumping, increase recycling, and

reduce public agency costs for end-of-life management of used mattresses.

- 2) Background. According to a recent article in the *Los Angeles Times*, “Californians buy about 4 million new mattresses and box springs a year. About half the time, the used mattresses that they replace end up in a guest room or go to friends or relatives. Many of the other 2 million discarded units get dumped on streets or sent to landfills. Fewer than 1 in 10 is recycled for wood, plastic, fiber batting and springs to be used in other products, such as steel and carpet padding. Discarded mattresses cause blight on urban streets and are magnets for mold, rats, insects and other vermin.” (Marc Lifsher, “California weighs mattress recycling fee,” *Los Angeles Times*, March 28, 2013.)
- 3) Illegal dumping and used mattress management. According to CalRecycle, illegal dumping is the act of disposing of solid waste at a location that is not a permitted solid waste disposal facility and is usually done for economic gain – posing significant social, environmental, and economic impacts throughout the state.

The California State Association of Counties, League of California Cities, and California Integrated Waste Management Board requested county administrative officers and city managers to participate in a June 2006 survey on illegal dumping and litter abatement. An annual local government abatement and enforcement cost of \$44 million is based on responses from 35 counties and 37 cities, so the cost is likely to be considerably higher. The California Department of Transportation incurs a \$55 million annual cost for highway cleanups.

According to CalRecycle, local governments tend to “view illegal dumping as a litter/nuisance abatement issue, rather than a solid waste issue. Local responses vary greatly statewide, both in terms of approach and level of activity. Local code enforcement plays a lead role in some communities, while public works departments have primary responsibility in others.”

CalRecycle notes that it is “responsible for investigation, cleanup, and enforcement of illegal solid waste disposal sites and shares this responsibility with local enforcement agencies (LEAs).” CalRecycle also established a state and local Illegal Dumping Technical Advisory Committee to assess the extent of the illegal dumping problem and make recommendations to CalRecycle to “enhance the effectiveness of local and regional responses to the problem.”



When used mattresses are properly disposed of in a solid waste facility, the mattresses are difficult to manage. Their bulk clogs up equipment and they are difficult to compact. In addition, after disposal, the mattresses have a tendency to “float” to the surface of the waste.

- 4) Recycling and remanufacturing mattresses. According to information by St. Vincent De Paul, the organization is the “world leader in mattress recycling. Our Oakland, California facility was the first commercially viable mattress recycling business in the world. Today, between our operations in Oakland and Eugene, Oregon we recycle over 120,000 mattresses and box springs every year.”

The organization notes that mattresses and box springs are cut open and separated into various components, including cotton, foam, wood and steel. Through this method, 85% to 90% of a typical mattress can be recycled. Steel is melted and recast as new items, foam is chipped for use in carpet pad, cotton is used in insulation, and wood can be composted or used as fuel.

Remanufacturing mattresses and box springs generally involves removing old coverings and materials inside the mattresses and box springs, and leaving the metal or wooden framework and springs which are repaired as needed. New padding is placed over the springs, foam is placed over the padding for comfort, and a new cover is sewn on in the same way as done at new mattress manufacturing facilities.

- 5) Waste-Management Theories: SB 254 creates a producer-managed used mattress recovery and recycling program. The bill requires a mattress recycling organization to develop and implement a manufacturer and retailer stewardship program to recover and recycle mattresses at the end of their useful life in an environmentally sound manner. The bill includes an advance recovery fee (ARF) to be paid by the consumer of a new mattress at the point of sale. The fee revenue funds the proposed program, which is managed by the organization and overseen and enforced by CalRecycle.

Extended producer responsibility (EPR), and take-back laws in particular, provides that manufacturers should be forced to internalize disposal costs and environmental externalities associated with their products. EPR involves: 1) the shifting of responsibility (physically and/or economically; fully or partially) upstream toward the producer and away from the municipalities;

and, 2) to provide incentives to producers to incorporate environmental considerations in the design of their products. This bill retains the core concept of EPR in that producers' environmental responsibility (EPR) for products extends beyond the factory door to the post-consumer stage, but is more of a hybrid of two other waste management theories: product stewardship and advance recovery fee (ARF).

Product Stewardship is closely related to EPR. Product stewardship programs usually involve voluntary approaches and multi-stakeholder dialogues between state governments, industry, and consumer and environmental groups to arrive at better management practices for particular products. Product stewardship differs from EPR in that responsibility is shared across the chain of custody.

A consumer-financed ARF is an alternative to producer-financed systems. Typically, retailers forward the proceeds to a governmental authority that would fund municipal collection centers and subsidize private recycling operations to make recycling economical. Tax incidence theory holds that some of the ARF would actually be absorbed by manufacturers or retailers, so the burden of funding the new recycling infrastructure would be shared. In California, e-waste is an example of an ARF program.

From the perspective of state and local governments, ARFs may be considered beneficial because they provide a steady source of revenue to fund the recycling infrastructure needed to manage waste, including "historic waste," which are used products already on the market when an ARF is enacted. In California, local governments are generally responsible for dealing with the illegal dumping of mattresses, which can be costly to the local governments. For example, the author notes that the City of Oakland currently picks up and disposes of approximately 18 to 35 illegally dumped mattresses per day, which annually costs the city \$501,355. Many manufacturers favor an ARF as well, because it leaves producers out of the collection and recycling process and may lead to a steady supply of subsidized secondary materials.

An ARF helps consumers understand that there is a real environmental consequence and disposal cost for products that they purchase. Such a fee also helps provide consumer awareness that pollution is not solely caused by industrial firms, but by individual consumption decisions as well.

However, some environmental groups may disagree with the ARF waste-

management theory and prefer EPR policies that directly assign take-back responsibility to producers, on the grounds that only EPR provides incentives for ecological design of products. A coalition of United States environmental groups has asserted, “[a] system that merely collects money at point of sale and hands it over to a government agency to ‘solve the problem’ does little to encourage clean production – since there are no built-in incentives in the approach to encourage better design...” (Noah Sachs, “Planning the Funeral at the Birth: Extended Producer Responsibility in the European Union and the United States,” *Harvard Environmental Law Review*, 2006.)

Rather than require CalRecycle to create and implement a used mattress recovery and recycling program, this bill requires mattress manufacturers and retailers to do so, which requires the producers to be part of the waste solution. This bill also helps ensure proper checks and balances by providing oversight and enforcement authority to CalRecycle.

- 6) Previous Legislation. Last year, SB 1118 (Hancock) would have established mattress recycling goals for the state with the final recycling goal of 75% of mattresses in the state by 2020. SB 1118 required mattress manufacturers to submit a mattress recycling plan to CalRecycle for approval and failure to do so would have prohibited mattress manufacturers from selling their products in the state. SB 1118 died on the Senate Floor (17-19).

**SOURCE:** Authors

**SUPPORT:** None on file

**OPPOSITION:** None on file