

A-Engrossed Senate Bill 1564

Ordered by the Senate February 14
Including Senate Amendments dated February 14

Sponsored by Senators MANNING JR, DEMBROW, Representative FAHEY; Senators BEYER, BURDICK, FREDERICK, GOLDEN, MONNES ANDERSON, PROZANSKI, RILEY, ROBLAN, TAYLOR, WAGNER, Representatives ALONSO LEON, HELM, HOLVEY, MCLAIN, NOSSE, WILDE (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Establishes product stewardship program for mattresses.

Establishes Mattress Stewardship Fund.

Establishes mattress stewardship program advisory committee.

Requires stewardship organizations to submit plans for mattress stewardship programs to Department of Environmental Quality.

Imposes civil penalties for violation of program provisions not to exceed, per day for each day of violation, \$100 for violation by retailer, [~~\$1,000~~] **\$10,000** for violation by producer or renovator and \$1,000 for violation by stewardship organization.

Becomes operative January 1, 2021.

[Declares emergency, effective on passage.]

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to mattresses; creating new provisions; amending ORS 459.995; and prescribing an effective date.

Be It Enacted by the People of the State of Oregon:

MATTRESS STEWARDSHIP

SECTION 1. The Legislative Assembly finds and declares that:

(1) It is in the best interests of the State of Oregon for producers of mattresses to take responsibility for developing, implementing and administering a statewide system for the financing, collection and environmentally sound management of discarded mattresses; and

(2) It is the State of Oregon's policy that a statewide system for the financing, collection and environmentally sound management of discarded mattresses:

(a) Provide free, convenient and accessible opportunities for collection of mattresses discarded in this state from any person, in both the urban and rural areas of this state;

(b) Be technologically feasible and economically practical; and

(c) Be consistent with the policies for solid waste management set forth in ORS 459.015

(2).

SECTION 2. As used in sections 1 to 14 of this 2020 Act:

(1) "Brand" means a name, symbol, word or mark that attributes a mattress to the producer of the mattress.

(2) "Consumer" means a person who is the purchaser, by retail sale, of a mattress for

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 final delivery and use in this state.

2 (3) "Discarded mattress" means a mattress or foundation that has been used, and aban-
3 doned or discarded, in this state.

4 (4) "Environmentally sound management" includes, but is not limited to, the following
5 management practices, implemented in a manner that is designed to protect public health
6 and safety and the environment:

7 (a) Adequate record keeping;

8 (b) Keeping detailed documentation of the methods used to:

9 (A) Manage discarded mattresses; and

10 (B) Track and document the fate of discarded mattresses from collection through final
11 disposition within this state and outside this state;

12 (c) Performance audits and inspections of recyclers, haulers and other parties as deter-
13 mined by a stewardship organization;

14 (d) Compliance with worker health and safety requirements; and

15 (e) Maintenance of adequate liability insurance for a stewardship organization and con-
16 tractors working for the stewardship organization.

17 (5) "Final disposition" means the point beyond which no further processing takes place
18 and a discarded mattress and its components have been recycled, renovated or disposed of.

19 (6) "Foundation" means a ticking-covered structure that is used to support a mattress
20 or sleep surface and that may be constructed of frames, foam, box springs or other materi-
21 als, used alone or in combination.

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

25 (b) "Mattress" does not mean:

26 (A) An unattached mattress pad or unattached mattress topper, with or without resilient
27 filling or ticking, that is intended to be used with or on top of a mattress;

28 (B) A sleeping bag;

29 (C) A pillow;

30 (D) A car bed, crib mattress or bassinet mattress;

31 (E) A carriage, basket, dressing table, stroller, playpen, infant carrier, lounge pad, crib
32 bumper or other product manufactured for young children or the pad for a product described
33 in this subparagraph;

34 (F) A water bed, an air mattress or another product that contains liquid- or gas-filled
35 ticking and that does not contain upholstery material between the ticking and the mattress
36 core;

37 (G) A foldout sofa bed, futon, futon mattress or upholstered furniture; or

38 (H) A foundation.

39 (8) "Mattress core" means the principal support system that is present in a mattress and
40 that may be constructed of materials such as springs, foam, air or water bladders or resilient
41 filling.

42 (9) "Mattress stewardship assessment" means the amount added at retail sale to the
43 purchase price of a mattress to cover the costs of a mattress stewardship program.

44 (10) "Mattress stewardship program" means a statewide program for the collection of
45 discarded mattresses and environmentally sound management of program mattresses that

1 is operated by a stewardship organization pursuant to a plan approved by the Department
2 of Environmental Quality under section 6 of this 2020 Act.

3 (11) "Mattress topper" means any item that contains resilient filling, with or without
4 ticking, that is intended to be used with or on top of a mattress.

5 (12) "Nonprofit organization" means an organization or group of organizations described
6 in section 501(c)(3) of the Internal Revenue Code that is exempt from income tax under
7 section 501(a) of the Internal Revenue Code.

8 (13) "Person" means the United States, the state or a public or private corporation, local
9 government unit, public agency, individual, partnership, association, firm, trust, estate or
10 other legal entity.

11 (14) "Premium service" means a service such as at-home pickup service, including
12 curbside pickup service.

13 (15) "Producer" means any person, irrespective of the selling technique used, including
14 that of remote sale, that:

15 (a) Manufactures a mattress that is sold, offered for sale or distributed in this state;

16 (b) Is the owner of a trademark or brand under which a mattress is sold, offered for sale
17 or distributed in this state, whether or not such trademark or brand is registered in this
18 state; or

19 (c) Imports a mattress into the United States that is sold or offered for sale in this state.

20 (16)(a) "Program mattress" means a discarded mattress that a stewardship organization
21 will provide environmentally sound management for under a mattress stewardship program.

22 (b) "Program mattress" does not mean a mattress or foundation transported from out-
23 side this state to be discarded in this state.

24 (17)(a) "Renovate" means to alter a discarded mattress for resale through replacing the
25 ticking or filling, adding additional filling or replacing components of the discarded mattress
26 with new or recycled materials.

27 (b) "Renovate" does not mean:

28 (A) Stripping a discarded mattress of the ticking or filling without adding new material;
29 or

30 (B) The sanitization or sterilization of a discarded mattress without other alteration to
31 the discarded mattress.

32 (18) "Renovator" means a person that renovates discarded mattresses.

33 (19) "Retailer" means a person that offers new, used or renovated mattresses or foun-
34 dations for retail sale.

35 (20) "Retail sale" means sale to a consumer in this state by any means and for any pur-
36 pose other than resale, including but not limited to sale by remote offerings such as sales
37 outlets, catalogs or the Internet.

38 (21) "Sanitization" means the direct application of chemicals to a mattress or foundation
39 to kill pathogens that cause human disease.

40 (22) "Sterilization" means the mitigation of any deleterious substances or organisms, in-
41 cluding pathogens that cause human disease, fungi and insects, from a mattress or founda-
42 tion or filling material using a chemical or heat process.

43 (23) "Stewardship organization" means a nonprofit organization designated by a producer
44 or group of producers to implement a mattress stewardship program.

45 (24)(a) "Ticking" means the outermost layer of fabric or related material of a mattress

1 or foundation.

2 (b) "Ticking" does not mean any layer of fabric or material quilted together with, or
3 otherwise attached to, the outermost layer of fabric or material of a mattress or foundation.

4 **SECTION 3.** (1) Except as provided in subsection (3) of this section, a producer, renovator
5 or retailer may not sell or offer for sale any mattress to any person in this state unless the
6 producer, renovator or retailer is registered with a stewardship organization.

7 (2) On and after the date that a mattress stewardship program is implemented, a retailer:

8 (a) May purchase a mattress only from a producer or renovator that is registered with
9 a stewardship organization as of the date of purchase as evidenced by information made
10 available by a stewardship organization pursuant to subsection (4) of this section;

11 (b) Shall collect, at the point of retail sale, the mattress stewardship assessment estab-
12 lished pursuant to a plan approved by the Department of Environmental Quality under sec-
13 tion 6 of this 2020 Act and remit the mattress stewardship assessment to the stewardship
14 organization that implements the mattress stewardship program; and

15 (c) Shall provide to consumers, at the point of retail sale, information on available col-
16 lection opportunities for discarded mattresses through the mattress stewardship program.

17 (3) A retailer registered with a stewardship organization that purchased a mattress from
18 a producer or renovator in compliance with subsection (2)(a) of this section is not in violation
19 of subsection (1) of this section if, at the time the retailer sells the mattress to a consumer,
20 the producer or renovator that the retailer purchased the mattress from is no longer regis-
21 tered with a stewardship organization.

22 (4) A stewardship organization shall make available on the stewardship organization's
23 website and on request:

24 (a) Information on the brands owned by all producers and renovators registered with the
25 stewardship organization;

26 (b) Information on available collection opportunities; and

27 (c) Any other information necessary for retailers to comply with subsection (2) of this
28 section.

29 (5) A retailer shall identify the mattress stewardship assessment as a separate line item
30 on the receipt for a mattress provided to a consumer at the point of sale. The mattress
31 stewardship assessment may not be described on the receipt as an Oregon recycling fee.

32 (6)(a) Subject to paragraph (b) of this subsection, a stewardship organization may use a
33 mattress stewardship assessment collected in this state only to pay the costs necessary to
34 plan, implement, administer and operate a mattress stewardship program in this state.

35 (b) A stewardship organization may not use any moneys collected through a mattress
36 stewardship assessment to pay penalties assessed against the stewardship organization under
37 ORS 459.995 or pay legal fees associated with legal action taken by the state.

38 (7) Nothing in this section prevents a stewardship organization from, with notice to the
39 department, coordinating efforts for carrying out a mattress stewardship program in this
40 state with programs for the collection and environmentally sound management of discarded
41 mattresses in other states.

42 (8) The department shall maintain on its website a list of all producers, renovators and
43 retailers that are in compliance with sections 1 to 14 of this 2020 Act.

44 **SECTION 4.** (1) In a form and manner prescribed by the Department of Environmental
45 Quality, a stewardship organization shall submit to the department a plan for the develop-

1 **ment and implementation of a mattress stewardship program. The plan must:**

2 (a) Describe how the stewardship organization will manage and administer a mattress
3 stewardship program.

4 (b) Identify program mattresses.

5 (c) Describe how discarded mattresses that are received through collection sites or col-
6 lection events and that are not program mattresses will be handled.

7 (d) Identify each producer, renovator and retailer that is registered with the stewardship
8 organization as of 30 days before the plan is submitted to the department.

9 (e) Include a description of how the stewardship organization will provide for the envi-
10 ronmentally sound management of program mattresses, regardless of the producer, with no
11 charge at the point of collection of discarded mattresses, except that the stewardship or-
12 ganization may allow for a person that provides a premium service under the mattress
13 stewardship program to charge for the additional cost of that premium service. The de-
14 scription shall include, at a minimum:

15 (A) Identification of the proposed transporters and recyclers that the stewardship or-
16 ganization will contract with to transport and process program mattresses and the recycling
17 methods that the recyclers will use;

18 (B) The auditing, inspection and other procedures that will be used by the stewardship
19 organization and the frequency at which the procedures will be implemented to ensure that
20 all entities the stewardship organization contracts with to implement the mattress
21 stewardship program engage in environmentally sound management practices; and

22 (C) A description of the processes that will be used to ensure that the recyclers con-
23 tracted with by the stewardship organization to process program mattresses will comply with
24 environmentally sound management practices.

25 (f) Provide service as described in section 5 of this 2020 Act.

26 (g) Establish performance goals for:

27 (A) The collection target and recycling rates of program mattresses; and

28 (B) Public awareness of the mattress stewardship program.

29 (h) Include an anticipated annual operating budget, as described in subsection (2) of this
30 section, for the mattress stewardship program for two years of operation of the program,
31 beginning with the year in which the plan is submitted to the department.

32 (i) Include a proposed mattress stewardship assessment method for collecting the
33 mattress stewardship assessment from retailers and a method for ensuring the assessment
34 is remitted to the stewardship organization. The mattress stewardship assessment must be
35 a flat amount that applies equally to each mattress sold to a consumer in this state and must
36 be sufficient to recover, but not exceed, the costs of establishing and administering the
37 mattress stewardship program, including but not limited to all costs incurred for the envi-
38 ronmentally sound management of program mattresses during each stage of management,
39 from collection of the program mattresses through final disposition of the program
40 mattresses.

41 (j) Provide a mechanism to mitigate the costs associated with collection and management
42 of discarded mattresses that are illegally dumped. The mechanism must include an incentive
43 for collectors of discarded mattresses that are illegally dumped and may include but need
44 not be limited to proposals for funding of cleanup activities, for education and outreach or
45 for studies to evaluate the causes of illegal dumping.

1 (k) Provide for public education, advertising and promotion of discarded mattress col-
2 lection opportunities statewide and on a regular basis.

3 (L) Include a closure plan that addresses how the stewardship organization will settle the
4 affairs of the mattress stewardship program in the event of dissolution of the stewardship
5 organization or cessation of operations of the mattress stewardship program by the
6 stewardship organization in this state.

7 (m) Describe methods that will be used by the stewardship organization to coordinate
8 activities with existing recycling programs, including existing nonprofit organizations that
9 are mattress recyclers, to further the environmentally sound management of discarded
10 mattresses.

11 (n) Address procedures for identifying substantial or material changes to the system for
12 collecting discarded mattresses for which a plan amendment will be required under section
13 7 of this 2020 Act.

14 (2) The anticipated annual operating budget for a mattress stewardship program shall
15 include, but need not be limited to, budget line items relating to:

16 (a) The collection, transportation and processing of program mattresses;

17 (b) The administrative costs of the mattress stewardship program to the stewardship
18 organization;

19 (c) The costs of compensating collection sites for their reasonable actual costs to collect
20 and manage discarded mattresses;

21 (d) The anticipated amount of moneys that the stewardship organization will hold in un-
22 allocated reserve funds for the mattress stewardship program; and

23 (e) The annual fee to be paid to the department pursuant to section 9 (3) of this 2020 Act.

24 (3) In operating a mattress stewardship program, a stewardship organization shall:

25 (a) Meet the requirements of the plan submitted under this section, as approved by the
26 department pursuant to section 6 of this 2020 Act.

27 (b) Meet or exceed the service requirements described in section 5 of this 2020 Act.

28 **SECTION 5.** (1)(a) A plan submitted under section 4 of this 2020 Act must provide for
29 convenient service through, at a minimum:

30 (A) Providing for at least one permanent collection site in every county with a population
31 of 10,000 people or more and an additional 25 collection sites distributed throughout this state
32 in a manner to extend convenient service to residents;

33 (B) Holding at least one collection event per year in counties that have a population of
34 less than 10,000 people and that do not have a permanent collection site;

35 (C) Providing for permanent collection sites that are in a county with a population of
36 10,000 people or more, to be staffed and open to the public at least six days per week;

37 (D) Providing for permanent collection sites that are in a county with a population of less
38 than 10,000 people, to be staffed and open to the public at least one day per week; and

39 (E) Providing a convenient method for the public to access a list of collection opportu-
40 nities.

41 (b) A plan may provide for methods for providing convenient service that are alternative
42 methods to those provided for in paragraph (a) of this subsection if, based on a geographic
43 information systems analysis, the alternative methods will result in providing service to
44 residents throughout this state that meets or exceeds the convenience of service provided
45 for under paragraph (a) of this subsection.

1 (2) A **stewardship organization shall:**

2 (a) **Establish and maintain collection sites at:**

3 (A) **Permitted solid waste facilities; or**

4 (B) **Other suitable sites for the collection of discarded mattresses, if the sites do not**
5 **impose a fee for making space available for storage containers.**

6 (b) **Provide for storage containers at no charge at, and transportation and recycling of**
7 **program mattresses from, collection sites described in paragraph (a) of this subsection.**

8 (c) **Provide financial compensation to collection sites described in paragraph (a) of this**
9 **subsection for their reasonable actual costs to collect and manage discarded mattresses.**

10 (d) **Provide for bulk pickup service at no cost to collect a minimum of 100 properly source**
11 **separated program mattresses at one time from persons including, but not limited to:**

12 (A) **Public bodies as defined in ORS 174.109;**

13 (B) **Retailers;**

14 (C) **Public or private disposal, transfer or material or energy recovery sites or facilities;**

15 (D) **Health care, educational or military facilities; and**

16 (E) **Hotels, motels, inns and other establishments that provide transient lodging.**

17 (e) **Offer organizations that recycle or renovate discarded mattresses the opportunity to**
18 **participate as collection sites.**

19 (f) **Prioritize renovation or recycling over disposal in providing for the environmentally**
20 **sound management and final disposition of program mattresses under the mattress**
21 **stewardship program.**

22 (g) **Notify retailers that sell or offer for sale mattresses made or sold by producers or**
23 **renovators registered with the stewardship organization about the mattress stewardship**
24 **program and provide retailers with information necessary to comply with sections 1 to 14**
25 **of this 2020 Act.**

26 **SECTION 6. (1) The Department of Environmental Quality shall approve, reject or re-**
27 **quest additional information for a plan submitted under section 4 of this 2020 Act or an**
28 **amendment to a plan submitted under section 7 of this 2020 Act no later than 90 days after**
29 **the date the department receives the plan or amendment from the stewardship organization.**
30 **The department shall post a plan or plan amendment on its website and provide for a public**
31 **comment period of no less than 30 days before approving, rejecting or requesting additional**
32 **information on the plan or plan amendment.**

33 (2)(a) **If the department rejects, or requests additional information for, the plan or plan**
34 **amendment, the department must provide the stewardship organization with the reasons, in**
35 **writing, that the plan or plan amendment does not meet the plan requirements of section 4**
36 **of this 2020 Act. The stewardship organization shall have 60 days from the date that the re-**
37 **jection or request for additional information is received to submit to the department any**
38 **additional information necessary for the approval of the plan or plan amendment. The de-**
39 **partment shall review and approve or disapprove the revised plan or plan amendment no**
40 **later than 45 days after the date the department receives the revised plan or plan amend-**
41 **ment.**

42 (b) **A stewardship organization may resubmit a revised plan or plan amendment to the**
43 **department on not more than two consecutive occasions. If, after the second consecutive**
44 **resubmission, the department determines that the revised plan or plan amendment does not**
45 **meet the plan requirements of section 4 of this 2020 Act, the department shall modify the**

1 plan or plan amendment as necessary for the plan or plan amendment to meet the require-
2 ments of section 4 of this 2020 Act and approve the plan or amended plan.

3 (3) The department's rejection of, or request for additional information for, an amend-
4 ment to a plan does not relieve a stewardship organization from continuing to implement a
5 mattress stewardship program in compliance with a previously approved plan pending a final
6 action by the department on the amendment.

7 (4) Beginning no later than 90 days after a plan or amended plan is approved under this
8 section, a stewardship organization must implement a mattress stewardship program as de-
9 scribed in the plan or amended plan.

10 (5)(a) Upon a written finding described in paragraph (b) of this subsection, and after
11 providing the stewardship organization an opportunity to respond to the finding, the depart-
12 ment may, in addition to any other penalty provided by law:

13 (A) Revoke approval of a plan or plan amendment under this section or require a
14 stewardship organization to resubmit a plan or plan amendment; or

15 (B) Require a stewardship organization to meet reporting requirements in addition to
16 those required under section 9 of this 2020 Act, as the Environmental Quality Commission
17 determines by rule or order may be appropriate to avoid future violations.

18 (b) Paragraph (a) of this subsection applies only if the department finds:

19 (A) That a stewardship organization has violated a provision of sections 1 to 14 of this
20 2020 Act; and

21 (B) That the violation has a material impact on the implementation and administration
22 of a plan previously approved by the department under this section.

23 **SECTION 7.** (1) A stewardship organization shall submit to the Department of Environ-
24 mental Quality for approval an amendment to a plan that has been approved by the depart-
25 ment under section 6 of this 2020 Act if, at any time:

26 (a) There is a substantial or material change, as provided for under section 4 (1)(n) of
27 this 2020 Act, to the system for collecting discarded mattresses;

28 (b) The stewardship organization proposes a change to the mattress stewardship assess-
29 ment; or

30 (c) The department requests an amendment to the plan in order to address a specific
31 finding by the department that:

32 (A) The administrative costs of the stewardship organization for the mattress
33 stewardship program equaled 20 percent or more of the organization's total annual operating
34 budget for the program during the prior calendar year; or

35 (B) The unallocated reserve funds held by the stewardship organization for the mattress
36 stewardship program during the prior calendar year equaled 75 percent or more of the
37 organization's total annual operating budget for the program during the year.

38 (2) The department may not request an amendment under subsection (1)(c) of this sec-
39 tion until two years after the implementation of a mattress stewardship program by the
40 stewardship organization.

41 (3) Not less than once per month, a stewardship organization shall provide written notice
42 to the department of any changes made during the previous month to a plan approved by the
43 department under section 6 of this 2020 Act that are changes for which an amendment is not
44 required under subsection (1) of this section. Changes subject to notice under this sub-
45 section include, but are not limited to:

1 (a) A change in the location or the number of permanent collection sites identified in the
2 plan;

3 (b) A change in the producers or renovators that are registered with the stewardship
4 organization; or

5 (c) A change in the recyclers or renovators that manage the discarded mattresses col-
6 lected by the stewardship organization under the program.

7 (4) The department shall approve any change for which notice is given under subsection
8 (3) of this section if the department determines that the change has a material impact on
9 the implementation and administration of a plan that has been previously approved by the
10 department under section 6 of this 2020 Act.

11 **SECTION 8.** (1)(a) A plan submitted under section 4 of this 2020 Act and approved by the
12 Department of Environmental Quality under section 6 of this 2020 Act is valid for four years.

13 (b) At least 180 days before the expiration of a plan approved under section 6 of this 2020
14 Act, the stewardship organization shall submit the plan to the department to be reapproved
15 for an additional four years. A plan submitted under this paragraph must include proposed
16 improvements based on the results of the study conducted under section 9 (4)(a) of this 2020
17 Act.

18 (2) Notwithstanding section 4 of this 2020 Act, the initial plan submitted by a stewardship
19 organization is not required to include the information described in section 4 (1)(g) or (L) of
20 this 2020 Act. A stewardship organization operating a mattress stewardship program shall
21 first submit the information described in section 4 (1)(g) and (L) of this 2020 Act pursuant
22 to the notification procedures set forth in section 7 (3) of this 2020 Act no later than two
23 years after implementation of the mattress stewardship program.

24 **SECTION 9.** (1) A stewardship organization that implements a mattress stewardship
25 program pursuant to a plan approved by the Department of Environmental Quality under
26 section 6 of this 2020 Act shall, no later than July 1 of each year, submit for review and ap-
27 proval to the department:

28 (a) The annual report provided for under subsection (2) of this section for the preceding
29 calendar year;

30 (b) An updated budget for the upcoming calendar year that follows the budget require-
31 ments provided for in section 4 of this 2020 Act; and

32 (c) The annual fee required under subsection (3) of this section.

33 (2) The annual report submitted by a stewardship organization shall include, at a mini-
34 mum, with respect to mattresses collected in this state:

35 (a) The mattress stewardship program's costs and revenues for the previous calendar
36 year;

37 (b) The number and tonnage of discarded mattresses collected pursuant to the mattress
38 stewardship program during the previous calendar year, sorted by type of collection site or
39 collection event;

40 (c) The number and tonnage of program mattresses collected pursuant to the mattress
41 stewardship program for recycling during the previous calendar year, sorted by type of col-
42 lection site or collection event;

43 (d) The number and tonnage of program mattresses collected pursuant to the mattress
44 stewardship program for renovation during the previous calendar year, sorted by type of
45 collection site or collection event;

1 (e) The weight of mattress materials recycled and the final disposition of mattress ma-
2 terials, by weight and by material, sold as commodities in secondary markets;

3 (f) The weight of mattress materials sent for disposal at each of the following:

4 (A) Waste-to-energy facilities;

5 (B) Landfills; and

6 (C) Any other facilities;

7 (g) An evaluation of why the mattress materials sent for disposal were not recycled and
8 a description of efforts that will be taken to increase the recycling rate of mattress materials
9 under the mattress stewardship program;

10 (h) The number of discarded mattresses received through collection that were not pro-
11 gram mattresses, the number of discarded mattresses that were illegally dumped reported
12 to the mattress stewardship program, an analysis of how the data required by this paragraph
13 has changed over time and strategies the stewardship organization will take to address dis-
14 carded mattresses that are not program mattresses and discarded mattresses that are ille-
15 gally dumped;

16 (i) The total sales of mattresses sold to consumers in this state in the previous calendar
17 year by producers, renovators and retailers registered with the stewardship organization;

18 (j) A summary of the public education offered in the previous calendar year that supports
19 the mattress stewardship program and examples of public education materials;

20 (k) An evaluation of the effectiveness of methods and processes used to achieve the goals
21 of the mattress stewardship program, information on progress made toward achieving the
22 goals, an explanation of why any goals were not met during the previous calendar year and
23 any efforts that will be taken to improve progress toward meeting the goals in the future,
24 if applicable;

25 (L) A report by an independent certified public accountant, retained by the stewardship
26 organization at the stewardship organization's expense, on the accountant's audit of the
27 stewardship organization's financial statements;

28 (m) A report on the outcome of audits of entities the stewardship organization contracts
29 with, as provided in section 4 (1)(e)(B) and (C) of this 2020 Act; and

30 (n) Recommendations for any changes to the mattress stewardship program, including
31 the potential utility of a ban on disposal of mattresses and foundations and information rel-
32 evant to compliance with the plan.

33 (3) The department shall establish an annual fee to be paid by the stewardship organiza-
34 tion that is reasonably calculated to cover the costs to the department to administer, im-
35 plement and enforce sections 1 to 14 of this 2020 Act. The department shall provide notice
36 to a stewardship organization no later than April 1 of each year of the annual fee for the
37 upcoming calendar year. Fees collected by the department under this section shall be de-
38 posited in the State Treasury to the credit of the Mattress Stewardship Fund established
39 under section 12 of this 2020 Act.

40 (4) In addition to meeting the requirements of subsection (1) of this section, a
41 stewardship organization shall:

42 (a) Conduct during the third year of implementing a mattress stewardship program, and
43 in consultation with community organizations, a study evaluating the most effective methods
44 of providing discarded mattress collection services to low-income individuals and multifamily
45 housing structures.

1 (b) Include in the annual report required for the third year of implementing a mattress
2 stewardship program under a plan or initial plan approved under section 6 of this 2020 Act:

3 (A) A report to the department on the scope of discarded mattresses in this state that
4 are not being collected as part of the stewardship organization's mattress stewardship pro-
5 gram and recommendations on how to direct the discarded mattresses to, and include them,
6 in the stewardship organization's program; and

7 (B) A life cycle assessment report of mattresses sold in this state.

8 (5)(a) The department may require a stewardship organization to have a performance
9 audit of the mattress stewardship program conducted and to include a report on the per-
10 formance audit in the next required annual report. A performance audit required under this
11 subsection must conform to audit standards established by nationally recognized entities in-
12 cluding, but not limited to, the United States Government Accountability Office and the Na-
13 tional Association of State Auditors, Comptrollers and Treasurers.

14 (b) Except as provided in paragraph (c) of this subsection, the department may require
15 a performance audit to be conducted under paragraph (a) of this subsection no more than
16 once every four years. The department may not first request a performance audit to be
17 conducted until the third year that a stewardship organization has implemented a mattress
18 stewardship program.

19 (c) The department may require a performance audit to be conducted under paragraph
20 (a) of this subsection less than four years after the last time that a performance audit was
21 conducted, if the department determines that the performance audit is warranted based on
22 information contained in a plan amendment submitted to the department under section 7 of
23 this 2020 Act.

24 (6) The department may not disclose any confidential proprietary information obtained
25 by the department under this section or section 4, 5, 6 or 7 of this 2020 Act.

26 **SECTION 10.** (1)(a) The Director of the Department of Environmental Quality shall ap-
27 point a mattress stewardship program advisory committee of not more than 10 members
28 representing the interests of the following entities in the stewardship of discarded
29 mattresses:

30 (A) Local governments;

31 (B) The solid waste industry;

32 (C) The environmental community; and

33 (D) The public.

34 (b) The director may not appoint to the advisory committee any person that has or who
35 may have a pecuniary interest in any contract awarded by a stewardship organization as part
36 of the implementation of a mattress stewardship program.

37 (2) The advisory committee shall meet not less than once annually and shall consult with
38 stewardship organizations operating mattress stewardship programs and advise the Depart-
39 ment of Environmental Quality regarding:

40 (a) The review and approval of any plan for the development and implementation of a
41 mattress stewardship program submitted to the department under section 4 of this 2020 Act;

42 (b) The review and approval of any amendment to a plan submitted under section 7 of
43 this 2020 Act; and

44 (c) The review of annual reports submitted by a stewardship organization under section
45 9 of this 2020 Act.

1 **SECTION 11.** (1) The Department of Environmental Quality shall have the power to enter
2 upon and inspect, at any reasonable time, any public or private property, premises or place
3 for the purpose of investigating either an actual or suspected violation of sections 1 to 14
4 of this 2020 Act.

5 (2) A stewardship organization shall retain all records related to implementation of a
6 mattress stewardship program for not less than three years and make the records available
7 for inspection by the department upon request.

8 **SECTION 12.** The Mattress Stewardship Fund is established, separate and distinct from
9 the General Fund. All moneys in the Mattress Stewardship Fund are continuously appropri-
10 ated to the Department of Environmental Quality and may be used only to pay the costs of
11 administering, implementing and enforcing sections 1 to 14 of this 2020 Act.

12 **SECTION 13.** (1) The Legislative Assembly declares that the collaboration of producers
13 and stewardship organizations to develop and implement mattress stewardship programs is
14 in the best interests of the public. Therefore, the Legislative Assembly declares its intent
15 that the establishment, administration, collection or disbursement of the mattress
16 stewardship assessment shall be exempt from state antitrust laws. The Legislative Assembly
17 further declares its intent to provide immunity for the establishment, administration, col-
18 lection or disbursement of the mattress stewardship assessment from federal antitrust laws.

19 (2)(a) This section does not authorize any person to engage in activities or to conspire
20 to engage in activities that constitute per se violations of state or federal antitrust laws that
21 are not authorized under sections 1 to 14 of this 2020 Act.

22 (b) This section does not apply to any activities related to:

23 (A) Pricing agreements for mattresses unrelated to the mattress stewardship assess-
24 ment;

25 (B) Agreements regarding the output or production of mattresses; or

26 (C) Restrictions on the geographic area in which, or the consumers to whom, mattresses
27 will be sold.

28 (3) The Department of Environmental Quality shall actively supervise the conduct of a
29 stewardship organization in establishing, administering, collecting and disbursing the
30 mattress stewardship assessment.

31 **SECTION 14.** The Environmental Quality Commission may adopt rules as necessary to
32 implement sections 1 to 14 of this 2020 Act.

33 **SECTION 15.** ORS 459.995 is amended to read:

34 459.995. (1) Except as provided in subsection (2) of this section, in addition to any other penalty
35 provided by law:

36 (a) Any person who violates ORS 459.205, 459.270, 459.272, 459.386 to 459.405, 459.705 to 459.790,
37 459A.005 to 459A.620, 459A.310 to 459A.335, 459A.675 to 459A.685 or 646A.080, or any rule or order
38 of the Environmental Quality Commission pertaining to the disposal, collection, storage or reuse or
39 recycling of solid wastes, as defined by ORS 459.005, or any rule or order pertaining to the disposal,
40 storage or transportation of waste tires, as defined by ORS 459.705, or any rule or order pertaining
41 to the sale of novelty items that contain encapsulated liquid mercury, incurs a civil penalty not to
42 exceed \$25,000 per day for each day of the violation.

43 (b) Any person who violates the provisions of ORS 459.420 to 459.426 incurs a civil penalty not
44 to exceed \$500 for each violation. Each battery that is disposed of improperly is a separate violation.
45 Each day an establishment fails to post the notice required under ORS 459.426 is a separate vio-

1 lation.

2 (c) For each day a city, county or metropolitan service district fails to provide the opportunity
3 to recycle as required under ORS 459A.005, the city, county or metropolitan service district incurs
4 a civil penalty not to exceed \$500 for each violation.

5 (d) Any person who violates the provisions of ORS 459.247 (1)(f) incurs a civil penalty not to
6 exceed \$500 for each violation. Each covered electronic device that is disposed of improperly is a
7 separate violation.

8 (e) Any retailer that violates the provisions of ORS 459A.825 (1) or (2)(b) **or section 3 of this**
9 **2020 Act** incurs a civil penalty not to exceed \$100 per day for each day of the violation.

10 (f) Any producer **or renovator** that violates the provisions of ORS 459A.825 (1) **or section 3**
11 **of this 2020 Act** incurs a civil penalty not to exceed [\$1,000] **\$10,000** per day for each day of the
12 violation.

13 (g) Any stewardship organization that violates the provisions of ORS 459A.825 (2)(a), 459A.827,
14 459A.830 to 459A.837 or 459A.842 **or sections 1 to 14 of this 2020 Act** incurs a civil penalty not
15 to exceed \$1,000 per day for each day of the violation. **Civil penalties imposed under this para-**
16 **graph are joint and several obligations of the stewardship organization and each producer**
17 **registered with the stewardship organization.**

18 (2) Any product manufacturer or package manufacturer who violates ORS 459A.650 to 459A.665
19 or any rule adopted under ORS 459A.650 to 459A.665 incurs a civil penalty not to exceed \$1,000 per
20 day for each day of the violation. A violation of ORS 459A.650 to 459A.665 is not subject to addi-
21 tional penalties under subsection (1) of this section.

22 (3) Any civil penalty authorized by subsection (1) or (2) of this section shall be imposed in the
23 manner provided by ORS 468.135.

24
25 **MISCELLANEOUS**

26
27 **SECTION 16. Sections 1 to 14 of this 2020 Act and the amendments to ORS 459.995 by**
28 **section 15 of this 2020 Act apply to all producers, renovators and retailers engaging in the**
29 **activities set forth in section 3 (1) of this 2020 Act on or after January 1, 2021.**

30 **SECTION 17. (1) Sections 1 to 14 of this 2020 Act and the amendments to ORS 459.995**
31 **by section 15 of this 2020 Act become operative on January 1, 2021.**

32 **(2) The Environmental Quality Commission and the Department of Environmental Qual-**
33 **ity may take any action before the operative date specified in subsection (1) of this section**
34 **that is necessary for the commission and the department to exercise, on and after the op-**
35 **erative date specified in subsection (1) of this section, all of the duties, functions and powers**
36 **conferred on the commission and the department by sections 1 to 14 of this 2020 Act and the**
37 **amendments to ORS 459.995 by section 15 of this 2020 Act.**

38 **SECTION 18. (1) Initial plans for mattress stewardship programs under sections 4 and 8**
39 **of this 2020 Act must be submitted to the Director of the Department of Environmental**
40 **Quality no later than October 1, 2021.**

41 **(2) Notwithstanding section 6 (4) of this 2020 Act, a stewardship organization shall im-**
42 **plement a mattress stewardship program as described in an initial plan submitted pursuant**
43 **to subsection (1) of this section no later than seven months after the date that the initial**
44 **plan is approved by the department under section 6 of this 2020 Act.**

CAPTIONS

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SECTION 19. The unit captions used in this 2020 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2020 Act.

EFFECTIVE DATE

SECTION 20. This 2020 Act takes effect on the 91st day after the date on which the 2020 regular session of the Eightieth Legislative Assembly adjourns sine die.
