A-Engrossed

Senate Bill 276

Ordered by the Senate April 15
Including Senate Amendments dated April 15

Sponsored by Senators MANNING JR, PROZANSKI, Representative FAHEY; Senators DEMBROW, FREDERICK, TAYLOR, Representatives NOSSE, POWER, SANCHEZ, 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 [initial] plans for mattress stewardship programs [to be submitted] to Department of Environmental Quality [no later than April 1, 2021. Provides that mattress stewardship program developed pursuant to approved plan may first be implemented no earlier than January 1, 2022].
Imposes civil [penalty] penalties for violation of program provisions not to exceed [$25,000], per day for each day of violation, $100 for violation by retailer, $1,000 for violation by producer or renovator and $1,000 for violation by stewardship organization.
Declares emergency, effective on passage.

A BILL FOR AN ACT
Relating to mattresses; creating new provisions; amending ORS 459.995; and declaring an emergency.

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, renovators and retailers 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.

SECTION 2. As used in sections 1 to 13 of this 2019 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 end user of a mattress purchased in this
(3) “Discarded mattress” means a mattress that has been abandoned or discarded by a consumer in this state.

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

(a) Adequate record keeping;

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

(A) Manage discarded mattresses; and

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

(c) Performance audits and inspections of recyclers, haulers, and other parties as determined by a stewardship organization;

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

(e) Maintenance of adequate liability insurance for a stewardship organization and contractors working for the stewardship organization.

(5) “Final disposition” means the point beyond which no further processing takes place and the discarded mattress has been recycled, renovated or disposed of.

(6) “Foundation” means a ticking-covered structure that is used to support a mattress or sleep surface and that may be constructed of frames, foam, box springs or other materials, used alone or in combination.

(7)(a) “Mattress” means:

(A) 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;

(B) A foundation and a renovated mattress; or

(C) A renovated foundation.

(b) “Mattress” does not mean:

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

(B) A sleeping bag;

(C) A pillow;

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

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

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

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

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

(9) “Mattress stewardship assessment” means the amount added to the purchase price of a mattress sold in this state that is necessary to cover the cost of establishing and ad-
ministering a program to collect, transport and process the discarded mattresses managed
through a mattress stewardship program.

(10) “Mattress stewardship program” means a statewide program for the collection and
environmentally sound management of discarded mattresses that is operated by a
stewardship organization pursuant to a plan approved by the Department of Environmental
Quality under section 5 of this 2019 Act.

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

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

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

(14) “Premium service” means a service such as at-home pickup service, including
curbisde pickup service.

(15) “Producer” means any person, irrespective of the selling technique used, including
that of remote sale, who:

(a) Manufactures a mattress that is sold, offered for sale or distributed in this state;
(b) Is the owner of a trademark or brand under which a mattress is sold, offered for sale
or distributed in this state, whether or not such trademark or brand is registered in this
state; or
(c) Imports a mattress into the United States that is sold or offered for sale in this state.

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

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

(b) “Renovate” does not mean:
(A) Stripping a mattress of the ticking or filling without adding new material; or
(B) The sanitization or sterilization of a mattress without other alteration to the
mattress.

(18) “Renovator” means a person who renovates discarded mattresses.

(19) “Retailer” means a person that offers new, used or renovated mattresses for sale
at retail to consumers through any means, including but not limited to remote offerings such
as sales outlets, catalogs or the Internet.

(20) “Sanitization” means the direct application of chemicals to a mattress to kill
pathogens that cause human disease.

(21) “Sterilization” means the mitigation of any deleterious substances or organisms, in-
cluding pathogens that cause human disease, fungi and insects, from a mattress or filling
material using a chemical or heat process.

(22) “Stewardship organization” means a nonprofit organization designated by a producer
or group of producers to implement a mattress stewardship program.

(23)(a) “Ticking” means the outermost layer of fabric or related material of a mattress.

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

(24) “Used mattress” means a discarded mattress or foundation that has undergone
sanitization or sterilization for the purposes of resale but that has not been renovated.

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

(2) On and after the date that an approved mattress stewardship program becomes op-
erative, a retailer:

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

(b) Shall collect, at the point of sale to a consumer, the mattress stewardship assessment
established pursuant to a plan approved by the Department of Environmental Quality under
section 5 of this 2019 Act and remit the mattress stewardship assessment to the stewardship
organization that implements the mattress stewardship program; and

(c) Shall provide to consumers, at the point of sale, information on available collection
opportunities for discarded mattresses through the mattress stewardship program.

(3) A retailer registered with a stewardship organization that purchased a mattress from
a producer or renovator in compliance with subsection (2)(a) of this section is not in violation
of subsection (1) of this section even if, at the time the retailer sells the mattress to a con-
sumer, the producer or renovator that the retailer purchased the mattress from is no longer
registered with a stewardship organization.

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

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

(b) Information on available collection opportunities; and

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

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

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

(b) A stewardship organization may not use any moneys collected through a mattress
stewardship assessment to pay any civil penalties assessed against the stewardship organ-
ization under ORS 459.995.

(7) Nothing in this section prevents a mattress stewardship organization from, with no-
tice to the department, coordinating efforts for carrying out a mattress stewardship program
in this state with programs for the collection and environmentally sound management of
discarded mattresses in other states.

(8) The department shall maintain on its website a list of all producers, renovators and
retailers that are in compliance with sections 1 to 13 of this 2019 Act.

SECTION 4. (1) In a form and manner prescribed by the Department of Environmental
Quality, a stewardship organization shall submit to the department a plan for the development and implementation of a mattress stewardship program. The plan must:

(a) Describe how the stewardship organization will:

(A) Manage and conduct a mattress stewardship program.

(B) Identify program mattresses and identify and address discarded mattresses that are received through collection sites or collection events and that are not program mattresses.

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

(c) Include a description of how the stewardship organization will provide for the environmentally sound management of program mattresses that includes, at a minimum:

(A) A description of the proposed recyclers that the stewardship organization will contract with to process discarded mattresses and the recycling methods that the recyclers will use;

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

(C) Processes for notifying the department when recyclers have been added to or removed from the mattress stewardship program.

(d) Provide for convenient service as described in subsection (2) of this section.

(e) Establish performance goals for:

(A) The collection rates and recycling rates for program mattresses; and

(B) Public awareness of the mattress stewardship program.

(f) Include a proposed mattress stewardship assessment and method for collecting the mattress stewardship assessment from retailers. The mattress stewardship assessment must be a flat amount that applies equally to each mattress sold in this state and must be sufficient to recover, but not exceed, the costs of the mattress stewardship program, including but not limited to all costs incurred for the environmentally sound management of discarded mattresses during each stage of management, from collection of the discarded mattresses from the public through final disposition of the discarded mattresses.

(g) Propose a mechanism to mitigate the costs associated with collection of discarded mattresses that are illegally dumped, which may include but need not be limited to proposals for funding of clean-up activities, for education and outreach or for studies to evaluate the causes of illegal dumping.

(h) Provide for public education, advertising and promotion of discarded mattress collection opportunities statewide and on a regular basis.

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

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

(k) Address procedures for identifying substantial or material changes to the system for
collecting discarded mattresses for which a plan amendment will be required under section
6 of this 2019 Act.

(2)(a) A plan must provide for convenient service through, at a minimum:
(A) Providing for at least one permanent collection site in every county with a population
of 10,000 people or more and an additional 25 collections sites distributed throughout the
state in a manner to extend convenient service to residents;
(B) Holding at least one collection event per year in counties that have a population of
less than 10,000 people and that do not have a permanent collection site;
(C) Providing for permanent collection sites to be staffed and open to the public at least
one day per week; and
(D) Providing a convenient method for the public to access a list of collection opportu-
nities.

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

(3) In operating a mattress stewardship program, a stewardship organization shall:
(a) Meet the requirements of the plan required by this section, as approved by the de-
partment pursuant to section 5 of this 2019 Act.
(b) Meet or exceed the requirements for providing convenient service as described in
subsection (2) of this section.
(c) Provide for the environmentally sound management of discarded mattresses, regard-
less of the producer, with no charge at the point of collection of the discarded mattresses,
except that the stewardship organization may allow for a person that provides a premium
service under the mattress stewardship program to charge for the additional cost of that
premium service.
(d) Establish and maintain collection sites at:
(A) Permitted solid waste facilities; or
(B) Other suitable sites for the collection of discarded mattresses from consumers, if the
sites do not impose a fee for making space available for the storage containers.
(e) Provide for storage containers at no charge and transportation and recycling of dis-
carded mattresses from collection sites described in paragraph (d) of this subsection.
(f) Provide financial compensation to collection sites described in paragraph (d) of this
subsection for their reasonable costs to collect and manage discarded mattresses.
(g) Provide for bulk pickup service at no cost to collect a minimum of 100 properly source
separated discarded mattresses at one time from persons including, but not limited to:
(A) Public bodies as that term is defined in ORS 174.109;
(B) Retailers;
(C) Public or private disposal, transfer or material or energy recovery sites or facilities;
(D) Health care, educational or military facilities; and
(E) Hotels, motels, inns and other establishments that provide transient lodging.
(h) Offer organizations that recycle or renovate discarded mattresses the opportunity to
participate as collection sites.
(i) Prioritize renovation or recycling over disposal in providing for the environmentally
sound management and final disposition of discarded mattresses under the mattress stewardship program.

(j) Notify retailers that sell or offer for sale mattresses made or sold by producers or renovators registered with the stewardship organization about the mattress stewardship program and provide retailers with information necessary to comply with sections 1 to 13 of this 2019 Act.

SECTION 5. (1) The Department of Environmental Quality shall approve, reject or request additional information for a plan submitted under section 4 of this 2019 Act or an amendment to a plan submitted under section 6 of this 2019 Act no later than 90 days after the date the department receives the plan or amendment from the stewardship organization. The department shall post a plan or plan amendment on its website, hold a hearing and provide for a public comment period of no less than 30 days before approving, rejecting or requesting additional information on the plan or plan amendment.

(2)(a) If the department rejects, or requests additional information for, the plan or plan amendment, the department must provide the stewardship organization with the reasons, in writing, that the plan or plan amendment does not meet the plan requirements of sections 1 to 13 of this 2019 Act. The stewardship organization shall have 60 days from the date that the rejection or request for additional information is received to submit to the department any additional information necessary for the approval of the plan or plan amendment. The department shall review and approve or disapprove the revised plan or plan amendment no later than 45 days after the date the department receives the revised plan or plan amendment.

(b) A stewardship organization may resubmit a revised plan or plan amendment to the department on not more than two consecutive occasions. If, after the second consecutive resubmittal, the department determines that the revised plan or plan amendment does not meet the plan requirements of sections 1 to 13 of this 2019 Act, the department shall modify the plan or plan amendment as necessary for the plan or plan amendment to meet the requirements of sections 1 to 13 of this 2019 Act and approve the plan or amended plan.

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

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

(5) Upon a written finding that a stewardship organization has violated any provision of sections 1 to 13 of this 2019 Act, and after providing the stewardship organization an opportunity to respond to the finding, the department may, in addition to any other penalty provided by law:

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

(b) Require a stewardship organization to meet reporting requirements in addition to those required under section 8 of this 2019 Act as the Environmental Quality Commission determines by rule or order may be appropriate to avoid future violations.

SECTION 6. (1) A stewardship organization shall submit to the Department of Environ-
mental Quality for approval an amendment to a plan that has been approved by the depart-
ment under section 5 of this 2019 Act if, at any time:

(a) There is a substantial or material change, as provided for under section 4 (1)(k) of
this 2019 Act, to the system for collecting discarded mattresses;
(b) The stewardship organization proposes a change to the mattress stewardship assess-
ment; or
(c) The department requests an amendment to the plan in order to address a specific
finding by the department that:
   (A) The administrative costs of the stewardship organization for the mattress
   stewardship program equaled 20 percent or more of the organization’s total annual budget
   for the program during the prior calendar year; or
   (B) The unallocated reserve funds held by the stewardship organization for the mattress
   stewardship program during the prior calendar year equaled 75 percent or more of the total
   annual budget for the program during the year.
(2) The department may not request an amendment under section (1)(c) of this section
until two years after the implementation of a mattress stewardship program by the
stewardship organization.
(3) If a stewardship organization makes a change to a plan approved by the department
under section 5 of this act or a change to a mattress stewardship program, and the change
is not one for which an amendment is required under subsection (1) of this section, the
stewardship organization shall provide written notice of the change to the department, no
later than 30 days after the date that the stewardship organization implements the change.
Changes subject to this subsection include, but are not limited to:
(a) A change in the location or the number of permanent collection sites identified in the
plan;
(b) A change in the producers or renovators that are registered with the stewardship
organization; or
(c) A change in the recyclers or renovators that manage the discarded mattresses col-
lected by the stewardship organization under the program.
SECTION 7. (1)(a) Except as provided in paragraph (b) of this subsection, a plan required
under section 4 of this 2019 Act and approved by the Department of Environmental Quality
under section 5 of this 2019 Act shall be valid for seven years.
(b) The initial plan submitted by a stewardship organization and approved by the depart-
ment shall be valid for five years.
(c) Upon expiration of a plan or initial plan, the stewardship organization shall submit
the plan to the department for reapproval.
(2) In addition to the requirements of section 4 of this 2019 Act, the initial plan submitted
by a stewardship organization must include an anticipated annual operating budget as de-
dscribed in section 8 (3) of this 2019 Act for the mattress stewardship program for the first
two years of operation of the program.
(3) Notwithstanding section 4 of this 2019 Act, the initial plan submitted by a stewardship
organization is not required to include the information described in section 4 (1)(e) or (i) of
this 2019 Act. A stewardship organization operating a mattress stewardship program shall
first submit the information described in section 4 (1)(e) and (i) of this 2019 Act pursuant to
the notification procedures set forth in section 6 of this 2019 Act no later than two years
after implementation of the mattress stewardship program.

SECTION 8. (1) A stewardship organization that implements a mattress stewardship program pursuant to a plan approved by the Department of Environmental Quality under section 5 of this 2019 Act shall, no later than July 1 of each year, submit:

(a) The annual report provided for under subsection (2) of this section for the preceding calendar year;
(b) The anticipated annual operating budget provided for under subsection (3) of this section for the upcoming calendar year; and
(c) The annual fee required under subsection (4) of this section.

(2) The annual report submitted by a stewardship organization shall include, at a minimum:

(a) The mattress stewardship program's costs and revenues for the previous year;
(b) The number and tonnage of discarded mattresses collected pursuant to the mattress stewardship program during the previous year by type of collection site or collection event;
(c) The number and tonnage of discarded mattresses collected pursuant to the mattress stewardship program for recycling and renovation;
(d) The weight of mattress materials recycled and the final disposition of mattress materials, by weight and by material, sold as commodities in secondary markets;
(e) The weight of mattress materials sent for disposal at each of the following:
   (A) Waste-to-energy facilities;
   (B) Landfills; and
   (C) Any other facilities;
(f) An evaluation of why the mattress materials sent for disposal were not recycled and a description of efforts that will be taken to increase the recycling rate of mattress materials under the mattress stewardship program;
(g) The number of discarded mattresses received through collection that were not program mattresses, the number of illegally dumped discarded mattresses reported to the mattress stewardship program, an analysis of how the data required by this paragraph has changed over time and strategies the stewardship organization will take to address discarded mattresses that are not program mattresses and illegally dumped discarded mattresses;
(h) The total sales of mattresses sold in this state in the previous year by producers, renovators and retailers registered with the stewardship organization;
(i) A summary of the public education offered in the previous year that supports the mattress stewardship program and examples of public education materials;
(j) An evaluation of the effectiveness of methods and processes used to achieve the goals of the mattress stewardship program, information on progress made towards achieving the goals, an explanation of why any goals were not met during the previous year and any efforts that will be taken to improve progress toward meeting the goals in the future, if applicable;
(k) An independent financial audit of the mattress stewardship program; and
(L) Recommendations for any changes to the mattress stewardship program, including the potential utility of a ban on disposal of mattresses and information relevant to compliance with the plan.

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

(a) The collection, transportation and processing of discarded mattresses;
(b) The administrative costs of the mattress stewardship program to the stewardship organization;
(c) The costs of compensating collection sites for their reasonable costs to collect and manage discarded mattresses;
(d) The anticipated amount of moneys that the stewardship organization will hold in unallocated reserve funds for the mattress stewardship program;
(e) The administrative fees to be paid to the department pursuant to subsection (4) of this section; and
(f) Any additional budgetary information requested by the department.

(4) The Environmental Quality Commission shall adopt by rule an annual fee to be paid by the stewardship organization to cover the costs to the department to administer, implement and enforce sections 1 to 13 of this 2019 Act. The department shall provide notice to a stewardship organization no later than April 1 of each year of the annual fee for the upcoming calendar year. Fees collected by the department under this section shall be deposited in the State Treasury to the credit of the Mattress Stewardship Fund established under section 11 of this 2019 Act.

(5) In addition to meeting the requirements of subsection (1) of this section, a stewardship organization shall:
   (a) Conduct during the third year of implementing a mattress stewardship program, and in consultation with community organizations, a study evaluating the most effective methods of providing discarded mattress collection services to low-income individuals and multifamily housing structures.
   (b) Include in the annual report required for the third year of implementing a mattress stewardship program:
      (A) A report to the department on the scope of discarded mattresses in this state that are not being collected as part of the stewardship organization’s mattress stewardship program and recommendations on how to direct the discarded mattress to, and include them, in the stewardship organization’s program; and
      (B) A life cycle assessment report of mattresses sold in this state.

(6) Beginning no earlier than after the third year that a stewardship organization has implemented a mattress stewardship program, the department may request a performance audit of the program to be conducted.

(7) The department may not disclose any confidential proprietary information obtained by the department under this section or sections 4, 5 or 6 of this 2019 Act.

SECTION 9. (1)(a) The Director of the Department of Environmental Quality shall appoint a mattress stewardship program advisory committee of not more than ten members representing the interests of the following entities in the stewardship of discarded mattresses:
   (A) Local governments;
   (B) The solid waste industry;
   (C) The environmental community; and
   (D) The public.
   (b) The director may not appoint to the advisory committee any person who has or who may have a pecuniary interest in any contract awarded by a stewardship organization as part of the implementation of a mattress stewardship program.
(2) The advisory committee shall meet not less than once annually and shall consult with stewardship organizations operating mattress stewardship programs and advise the Department of Environmental Quality regarding:
   (a) The review and approval of any plan for the development and implementation of a mattress stewardship program submitted to the department under section 4 of this 2019 Act;
   (b) The review and approval of any amendment to a plan submitted under section 6 of this 2019 Act; and
   (c) The review of annual reports submitted by a stewardship organization under section 8 of this 2019 Act.

SECTION 10. (1) The Department of Environmental Quality shall have the power to enter upon and inspect, at any reasonable time, any public or private property, premises or place for the purpose of investigating either an actual or suspected violation of sections 1 to 13 of this 2019 Act.

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

SECTION 11. The Mattress Stewardship Fund is established, separate and distinct from the General Fund. All moneys in the Mattress Stewardship Fund are continuously appropriated to the Department of Environmental Quality and may be used only to pay the costs of administering, implementing and enforcing sections 1 to 13 of this 2019 Act.

SECTION 12. (1) The Legislative Assembly declares that the collaboration of producers and stewardship organizations to develop and implement mattress stewardship programs is in the best interests of the public. Therefore, the Legislative Assembly declares its intent that the development, implementation and operation of mattress stewardship programs as required by sections 1 to 13 of this 2019 Act shall be exempt from state antitrust laws. The Legislative Assembly further declares its intent to provide immunity for the development, implementation and operation of mattress stewardship programs as required by sections 1 to 13 of this 2019 Act from federal antitrust laws. This section does not authorize any person to engage in activities or to conspire to engage in activities that constitute per se violations of state or federal antitrust laws that are not authorized under sections 1 to 13 of this 2019 Act.

(2)(a) Subsection (1) of this section applies to actions taken by stewardship organizations to:

(A) Develop, implement and administer a mattress stewardship program pursuant to a plan approved by the Department of Environmental Quality under section 5 of this 2019 Act; and

(B) Establish, administer, collect or disburse the mattress stewardship assessment.

(b) Subsection (1) of this section does not apply to any activities related to:

(A) Pricing agreements for mattresses unrelated to the mattress stewardship assessment;

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

(C) Activities restricting the geographic area in which, or the consumers to whom, mattresses will be sold.

(3) The department shall actively supervise the conduct of a stewardship organization. The department may require the stewardship organization to take whatever action the de-
partment considers necessary to:

(a) Ensure that the stewardship organization is engaging in conduct authorized under sections 1 to 13 of this 2019 Act;

(b) Ensure that the policies of the state are being fulfilled by a mattress stewardship program; and

c) Enjoin conduct that is not authorized by the department or conduct that the department finds does not advance the interests of this state in carrying out the mattress stewardship program.

SECTION 13. The Environmental Quality Commission may adopt rules as necessary to implement sections 1 to 13 of this 2019 Act.

SECTION 14. ORS 459.995 is amended to read:

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

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

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

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

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

(e) Any retailer that violates the provisions of ORS 459A.825 (1) or (2)(b) or section 3 of this 2019 Act incurs a civil penalty not to exceed $100 per day for each day of the violation.

(f) Any producer or renovator that violates the provisions of ORS 459A.825 (1) or section 3 of this 2019 Act incurs a civil penalty not to exceed $1,000 per day for each day of the violation.

(g) Any stewardship organization that violates the provisions of ORS 459A.825 (2)(a), 459A.827, 459A.830 to 459A.837 or 459A.842 or sections 1 to 13 of this 2019 Act incurs a civil penalty not to exceed $1,000 per day for each day of the violation.

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

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

SECTION 15. Sections 1 to 13 of this 2019 Act and the amendments to ORS 459.995 by section 14 of this 2019 Act apply to all producers, renovators and retailers engaging in the
activities set forth in section 3 (1) of this 2019 Act on or after January 1, 2020.

MISCELLANEOUS

SECTION 16. (1) Sections 1 to 13 of this 2019 Act and the amendments to ORS 459.995 by section 14 of this 2019 Act become operative on January 1, 2020.

(2) The Environmental Quality Commission and the Department of Environmental Quality may take any action before the operative date specified in subsection (1) of this section that is necessary for the commission and the department to exercise, on and after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the commission and the department by sections 1 to 13 of this 2019 Act and the amendments to ORS 459.995 by section 14 of this 2019 Act.

CAPTIONS

SECTION 17. The unit captions used in this 2019 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 2019 Act.

EMERGENCY CLAUSE

SECTION 18. This 2019 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect on its passage.