June 12, 2019

Senator Ben Allen  
STATE CAPITOL, ROOM 4076  
SACRAMENTO, CA 95814

RE: AB 187 (Gracia) – Used Mattress Recovery and Recycling Act – OPPOSE UNLESS AMENDED

Dear Senator Allen,

On behalf of our organizations and members throughout California, while we appreciated the opportunity to work with your staff on the bill language, we believe that the most current proposed amendments to the bill are failing to address the following concerns:

1. The mattress recycling organization should not be allowed to maintain section 501(c)(6) status under section 42986(h)

Since the funding for the program comes from the consumer fee which is public money, as such the mattress recycling organization should not be allowed to form as a “for members benefit only” corporation, but rather as a “for public benefit” corporation. Please see the attached white paper, prepared by a legal firm that only practices non-profit law, that specifically addresses IRS 501 C corporation formation. The reason for this requirement to ensure transparency and accountability.

Further, CalRecycle maintains a legislative checklist for EPR bills that also encourages a 501 C3 status. This checklist can be found at:

https://www.calrecycle.ca.gov/docs/cr/epr/resources/checklistfinal.pdf

2. The mattress recycling organization should include at least one California-based mattress recycler or hauler on its Board of Directors.

California-based recyclers and haulers are the existing infrastructure and therefore are a key part of success of the mattress recycling program, therefore, they should have a position on the Board of Directors. This will help to ensure that the MRC harmonizes with the existing infrastructure.

Additionally, the definition of “qualified industry association” in section 42986(k) should delete references to the International Sleep Products Association. The definition of a stewardship
organization should simply set out the parameters of the organization rather than specifically identify a particular organization.

3. **CalRecycle should be authorized to set and adjust the recycling and recovery rate goals.**

Subsection (h) should be removed from section 42817.1, which discusses the required elements of the mattress recycling plan, and moved to section 42981.5(a)(1), new subsection (C), as a duty of CalRecycle. CalRecycle, rather than the stewardship organization itself, typically determines performance standards, including recycling rates, in other product stewardship programs. This is currently perceived as the “fox watching the chicken coop.”

4. **The mattress recycling organization should prioritize using California-based processing facilities as a mattress recycling plan element in section 42987.1(i).**

The mattress recycling organization should absolutely be required to prioritize spending California consumer fee money in California by contracting with California-based recyclers over out-of-state recyclers. Additionally, the mattress recycling organization should explain how it prioritized California-based processors/recyclers over out-of-state processors/recyclers in its annual reports in section 42990.1.

5. **Section 42987.1(o)(2), which requires mandatory participation in the mattress recycling program of solid waste facilities that accept 1,000 or more mattresses per year should be removed.**

Remove Section 42987.1(o)(2). Forcing solid waste facilities into the mattress program will not address the audit findings or achieve the recommendations. First, this is a product stewardship program, so the primary focus in addressing program inadequacies should be on the producers and retailers, bringing them into compliance with basic program requirements, such as registering with the mattress recycling organization and providing free mattress pickup with the delivery of a new mattress. Retailers picking up used mattresses with the delivery of new mattresses is the quickest, easiest, and most convenient way for consumers to get rid of used mattresses. Mattress delivery is typically an additional cost when buying a mattress. Consumers pay the delivery fee because they are unable to transport the new mattress themselves. If they cannot transport the new mattress to their homes, they will not be able to transport the used mattress to a mattress collection location. Additionally, if the primary hurdle to consumers in recycling mattresses is lacking the means to transport a mattress, forcing stationary mattress collection locations will not address the issue of illegal dumping of mattresses.

Instead, the mattress recycling organization should provide financial incentives to encourage all types of permanent drop-off locations, not only solid waste facilities, to participate in the mattress recycling program to achieve an increased level of consumer convenience. We suggest adding this to section 42987.1.
Additionally, section 42987.1(o)(1) provides that individuals may drop off mattresses, at no charge, to solid waste facilities. It should be made clear that this provision only applies to permanent drop-off locations that have agreed to be covered under the mattress recycling program. Those facilities negotiate a reasonable reimbursement rate with the mattress recycling organization for accepting, collecting, storing, transporting, and handling used mattresses. Again, forcing these facilities to participate in the program eliminates their ability to negotiate an effective agreement and rate with the mattress recycling organization for their local areas of service.

6. **The mattress recycling organization should be required to prioritize the waste hierarchy and support refurbishing and renovating mattresses.**

Prioritizing the waste hierarchy by supporting refurbishing and renovating mattresses should be added as a mattress recycling plan element in section 42987.1. Supporting refurbishing and renovating mattresses is one way to address source reduction.

Additionally, the audit explicitly recommended CalRecycle establish goals to encourage source reduction, as well as to increase consumer convenience and decrease illegal dumping of mattresses. Section 42987.5(a)(1)(C) deleted references to source reduction and illegal dumping, in subsections (ii) and (iii), and focused solely on consumer convenience, in subsection (i). This language should remain unchanged from previous version of the bill. The changes reflected in the proposed amendment would be counter to existing law.

7. **The annual report and budget should be combined into one document, which combines the approval process for both.**

Section 42987.1(e) discusses the establishment and administration of a means for funding the mattress recycling plan. This is the budget, and this is consistent with the budget process in the carpet stewardship program. Sections 42988 and 42988.1, which discuss the budget, should be deleted in their entirety. They are completely unnecessary and they led to the reduction of the consumer recycling fee against the recommendations of the advisory committee and stakeholder community, while we still had seven counties without any collection options.

Additionally, the budget should be combined into the stewardship plan and subsequent annual report, creating one document and approval process, similar to the carpet and other product stewardship programs, to ensure transparency and streamline the process. As currently drafted, the bill continues two entirely different processes that cause extra work and confusion and can easily be combined into one process as we have already seen successfully modeled in other product stewardship programs.

Similarly, any change in the amount of the recycling fee, discussed in section 42989(c), should happen only during the public annual report or plan review processes.
8. All studies and reports should be made available to the public within 30 days of completion.

All studies and reports developed using California consumer fee money must be made public within 30 days of completion. The reason is that it has been difficult to obtain these studies in the past and all Californians should have access to these reports since they were fund by California consumer fee money. We suggest adding new subsection (c) to section 42989.3

9. The bill should establish a bridge plan to provide mechanisms to minimize disruptions to the recycling infrastructure by ensuring any and all available funds are transferred back to the People of California in the event the stewardship organization ceases program operation.

This has been an issue with all the consumer fee funded programs that were originally passed without consideration given to the possibility of revocation of stewardship program operation. AB 729 contains this exact language to protect consumer fee money. It requires California consumer fee money to be returned to California.

10. The mattress recycling organization should be required to implement the advisory committee’s recommendations to the extent feasible.

We suggest adding new subsection in section 42990.1, which discusses the elements required in the mattress recycling organization’s annual report, to address the advisory committee recommendations. The mattress recycling organization should incorporate, to the extent feasible, the advisory committee’s recommendations in the annual report, the mattress recycling plan itself, and any amendments to the plan. If the mattress recycling organization is unable to incorporate the recommendations, it should provide a written explanation as to why. The explanation should also detail whether the mattress recycling organization plans to incorporate the recommendations into a subsequent mattress recycling plan, subsequent amendments to the plan, or a subsequent annual report. This language models that of the carpet stewardship program in AB 1158.

11. Convenience collection goals should be established by 2020 and effective 2021 in section 42987.5(a)(1)(D).

This change is necessary to be consistent with the audit findings.
12. Because the mattress recycling organization’s financial reserves are capped at 60% of its annual operating expenses in section 42988.3(b), the bill should specify that spending on program implementation should be prioritized over reducing the consumer recycling fee.

The mattress recycling organization should also be directed to prioritize spending reserves to reimburse mattress collectors and recyclers at an appropriate rate and to implement all other aspects of the program and ensure all program goals have been met before reducing the recycling fee. Further, Section 42988.3 (a) should be removed since the budget would be submitted as part of the plan and annual reports. Additionally, Section 42988.3 (b) should be revised to reflect 2021-22 for the 60% requirement, rather than 2027-28, because we see no logical reason for this requirement being delaying so long.

We, the undersigned, strongly request that you consider the changes outlined above and reflected on the attached marked up version of the draft amendments. We will continue to work with your staff to draft language that will improve the mattress recycling program in California, while helping you meet your goals for resolving the findings of the State audit of the program.

Respectfully,

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