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## AB-1158 Carpet recycling. (2017-2018)

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### Assembly Bill No. 1158

#### CHAPTER 794

An act to amend Sections 42971, 42972, 42972.5, 42974, 42975, and 42982 of, and to add Sections 42972.1, 42972.2, and 42973.5 to, the Public Resources Code, relating to recycling.

[ Approved by Governor October 14, 2017. Filed with Secretary of State October 14, 2017. ]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 1158, Chu. Carpet recycling.

Existing law requires a manufacturer of carpets sold in this state to submit, either individually or through a carpet stewardship organization, a carpet stewardship plan that meets specified requirements to the Department of Resources Recycling and Recovery. Existing law imposes a carpet stewardship assessment per unit of carpet sold in the state that is remitted to the carpet stewardship organization and may be expended to carry out the organization's carpet stewardship plan. Existing law provides that the purpose of carpet stewardship laws is to increase the amount of postconsumer carpet that is diverted from landfills and recycled into secondary products or otherwise managed in a manner that is consistent with the state's hierarchy for waste management practices. Existing law requires a carpet stewardship organization, in order to achieve compliance with the carpet stewardship laws, to demonstrate to the department that it has achieved continuous meaningful improvement in the rates of recycling and diversion of postconsumer carpet subject to its stewardship plan and in meeting the other specified goals included in the organization's plan.

This bill would provide that it is the goal of the state to reach a 24% recycling rate for postconsumer carpet by January 1, 2020, and to meet or exceed that rate continually thereafter. The bill would require a carpet stewardship plan to achieve a 24% recycling rate for postconsumer carpet by January 1, 2020, and to include quantifiable 5-year goals and annual goals, as specified. The bill would require a carpet stewardship plan to achieve any other recycling rate, and include goals, that the department required after plan review. The bill would require a review no sooner than January 1, 2020, and no less frequently than every 3 years thereafter and would authorize adjustments to the recycling rate and program goals by the department upon each review. The bill would require a carpet stewardship organization to provide to the department all data necessary for the department to evaluate the effectiveness of the program as it is described in the carpet stewardship plan and in annual reports submitted by the carpet stewardship organization. If a carpet stewardship plan that was previously approved by the department terminates or is revoked, the bill would authorize the department to allow a manufacturer that is no longer subject to the plan to continue to sell carpet in California for a period of one year after the plan terminates or is revoked, without being subject to penalties, if the manufacturer meets either of 2 requirements. The bill would revise the criteria that a carpet stewardship organization is required to meet in order to achieve compliance with the carpet stewardship laws. The bill would prohibit a carpet stewardship organization from expending funds from the carpet stewardship assessment for specified costs and penalties, including for engineered solid waste conversion, as defined, the use of cement kilns to burn carpet, or transformation, as defined.

The bill would create an advisory committee that would be required to provide comments and recommendations on carpet stewardship plans, amendments to plans, and annual reports. The bill would require the carpet stewardship organization or manufacturer to incorporate those recommendations to the extent feasible. The bill would require the Director of Resources Recycling and Recovery, the Speaker of the Assembly, and the Senate Committee on Rules to appoint members to the advisory committee, as specified.

Existing law requires the Department of General Services, to the extent feasible and within existing resources, to take appropriate steps, including, but not limited to, revising relevant procurement rules, to ensure that postconsumer carpet that is removed from state buildings is managed in a manner consistent with the purpose of the carpet stewardship laws.

This bill would require the Department of General Services to additionally ensure, under those same conditions, that carpet purchased by a state agency contains a minimum amount of postconsumer content that would be determined by the Department of General Services and published in the State Contracting Manual by July 1, 2018.

Existing law defines “carpet” for purposes of these laws to mean a manufactured article that is used in commercial or residential buildings affixed or placed on the floor or building walking surface as a decorative or functional building interior feature and that is primarily constructed of a top visible surface of synthetic face fibers or yarns or tufts attached to a backing system derived from synthetic or natural materials.

This bill would expand the carpet stewardship program by revising the definition of carpet to include manufactured items that meet those same descriptions, but that are primarily constructed of a top visible surface of natural face fibers, yarns, or tufts.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

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## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** Section 42971 of the Public Resources Code is amended to read:

**42971.** For purposes of this chapter, and unless the context otherwise requires, the definitions in this section govern the construction of this chapter:

(a) “Brand” means a name, symbol, word, or mark that identifies the carpet, rather than its components, and attributes the carpet to the owner or licensee of the brand as the manufacturer.

(b) “CARE” means the Carpet America Recovery Effort, a third-party nonprofit carpet stewardship organization incorporated as a nonprofit corporation pursuant to Section 501(c)(3) of Title 26 of the United States Code in 2002 and established to increase the reclamation and stewardship of postconsumer carpet.

(c) “CARE MOU” means the 2012 Memorandum of Understanding for Carpet Stewardship, as to be negotiated among the carpet industry, states, and nongovernmental organization stakeholders as a successor to the 2002 memorandum of understanding.

(d) (1) “Carpet” means a manufactured article that is used in commercial or residential buildings affixed or placed on the floor or building walking surface as a decorative or functional building interior feature and that is primarily constructed of a top visible surface of synthetic or natural face fibers or yarns or tufts attached to a backing system derived from synthetic or natural materials.

(2) “Carpet” includes, but is not limited to, a commercial or a residential broadloom carpet or modular carpet tiles.

(3) “Carpet” does not include a rug, pad, cushion, or underlayment used in conjunction with, or separately from, a carpet.

(e) (1) “Carpet stewardship organization” or “organization” means either of the following:

(A) An organization appointed by one or more manufacturers to act as an agent on behalf of the manufacturer to design, submit, and administer a carpet stewardship plan pursuant to this chapter.

(B) A carpet manufacturer that complies with this chapter as an individual manufacturer.

(2) Notwithstanding paragraph (1), until April 1, 2015, CARE shall be the sole carpet stewardship organization pursuant to subparagraph (A) of paragraph (1).

This paragraph does not restrict the option of an individual carpet manufacturer to comply with this chapter as a carpet stewardship organization, on and after January 1, 2011, pursuant to subparagraph (B) of paragraph (1).

(f) “Carpet stewardship plan” or “plan” means a plan written by an individual manufacturer or a carpet stewardship organization, on behalf of one or more manufacturers, that includes all of the information required by Section 42972.

(g) "Consumer" means a purchaser, owner, or lessee of carpet, including a person, business, corporation, limited partnership, nonprofit organization, or governmental entity.

(h) "Department" means the Department of Resources Recycling and Recovery.

(i) "Label" means a graphic representation of three chasing arrows with a carpet roll inside the arrows, or an alternative design, designed by CARE, after consultation with retailers and wholesalers, and approved by the department for use on all invoices or functionally equivalent billing documents pursuant to subparagraph (C) of paragraph (3) of subdivision (c) of Section 42972.

(j) "Manufacturer" means, with regard to a carpet that is sold, offered for sale, or distributed in the state any of the following:

(1) The person who manufactures the carpet and who sells, offers for sale, or distributes that carpet in the state under that person's own name or brand.

(2) If there is no person who sells, offers for sale, or distributes the carpet in the state under the person's own name or brand, the manufacturer of the carpet is the owner or licensee of a trademark or brand under which the carpet is sold or distributed in the state, whether or not the trademark is registered.

(3) If there is no person who is a manufacturer of the carpet for the purpose of paragraphs (1) and (2), the manufacturer of that carpet is the person who imports the carpet into the state for sale or distribution.

(k) "Postconsumer carpet" means carpet that is no longer used for its manufactured purpose.

(l) "Processor" means a company that uses a process, including, but not limited to, shredding, grinding, sheering, or depolymerization, to convert discarded whole carpet into finished recycled output that is ready to be utilized as an input material for manufacturing products.

(m) "Recycling" means the process, consistent with Section 40180, of converting postconsumer carpet into a useful product that meets the quality standards necessary to be used in the marketplace.

(n) "Retailer" means a person who offers new carpet in a retail sale, as defined in Section 6007 of the Revenue and Taxation Code, including a retail sale through any means, including remote offerings such as sales outlets, catalogs, or an Internet Web site or other similar electronic means.

(o) "Sell" or "sales" means a transfer of title of a carpet for consideration, including a remote sale conducted through a sales outlet, catalog, Internet Web site or similar electronic means. For purposes of this chapter, "sell" or "sales" includes a lease through which a carpet is provided to a consumer by a manufacturer, wholesaler, or retailer.

(p) "Wholesaler" means a person who offers new carpet for sale in this state in a sale that is not a retail sale, as defined in Section 6007 of the Revenue and Taxation Code, and in which the carpet is intended to be resold.

**SEC. 2.** Section 42972 of the Public Resources Code is amended to read:

**42972.** (a) On or before September 30, 2011, a manufacturer of carpets sold in this state shall, individually or through a carpet stewardship organization, submit a carpet stewardship plan to the department that will do all of the following:

(1) Achieve the purposes of this chapter, as described in Section 42970, and meet the requirements of Section 42975.

(2) Achieve a 24-percent recycling rate for postconsumer carpet by January 1, 2020, and any other recycling rate established by the department pursuant to Section 42972.2. The carpet stewardship plan shall include quantifiable five-year goals and annual goals for how the recycling rate will be achieved and how the carpet stewardship organization or manufacturer plans to do the following:

(A) Increase the weight of postconsumer carpet that is recycled and reduce the disposal of postconsumer carpet.

(B) Increase the collection convenience for the recycling of postconsumer carpet and increase the collection of postconsumer carpet for recycling.

(C) Expand and incentivize markets for products made from postconsumer carpet.

(D) Increase processor capacity, including processor capacity in California.

(E) Increase the recyclability of carpet.

(3) Describe proposed measures that will enable the management of postconsumer carpet in a manner consistent with the state's solid waste management hierarchy, including, but not limited to, source reduction, source separation and processing to

segregate and recover recyclable materials, and environmentally safe management of materials that cannot feasibly be recycled.

(4) Include a funding mechanism, consistent with subdivision (c), that provides sufficient funding to carry out the plan, including the administrative, operational, and capital costs of the plan, payment of fees pursuant to Section 42977, and incentive payments that will advance the purposes of this chapter, including incentives or grants to state-approved apprenticeship programs for training apprentice and journey-level carpet installers in proper carpet recycling practices. Any grants or subsidies provided for the recycling of postconsumer carpet shall be structured to incentivize the recycling of carpet materials that have the highest recyclability. The funding mechanism shall account for the need to provide the industry, including carpet installation contractors, with fair notice of changes to the amount of the carpet stewardship assessment established pursuant to subdivision (c).

(5) Include education and outreach efforts to consumers, commercial building owners, carpet installation contractors, and retailers to promote their participation in achieving the purposes of the carpet stewardship plan as described in paragraph (1). These education and outreach materials may include, but are not limited to, any of the following:

(A) Signage that is prominently displayed and easily visible to the consumer.

(B) Written materials and templates of materials for reproduction by retailers to be provided to carpet installation contractors and consumers at the time of purchase or delivery or both.

(C) Promotional materials or activities, or both, that explain the purpose of carpet stewardship and the means by which it is being carried out.

(6) Include a process by which the financial activities of the organization or individual manufacturer that are related to implementation of the plan will be subject to an independent audit, which may be reviewed by the department.

(b) The plan prepared pursuant to this section shall be designed to accept and manage all suitable postconsumer carpet, regardless of polymer type or primary materials of construction.

(c) (1) The funding mechanism required pursuant to paragraph (4) of subdivision (a) shall establish and provide for, on and after January 1, 2013, a carpet stewardship assessment per unit of carpet sold in the state in an amount that cumulatively will adequately fund the plan and be consistent with the purposes of the chapter. The assessment shall be remitted to the carpet stewardship organization on a quarterly basis and the carpet stewardship organization may expend the assessment only to carry out the plan.

(2) The amount of the assessment and the anticipated revenues from the assessment shall be specified in the plan and shall be approved by the department as part of the plan. The amount of the assessment shall be sufficient to meet, but not exceed, the anticipated cost of carrying out the plan. The amount of the assessment shall not create an unfair advantage in the marketplace.

(3) The assessment established pursuant to this subdivision and Section 42972.5 is exempt from the taxes imposed by Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code and shall meet both of the following requirements:

(A) The assessment shall be added by a manufacturer to the purchase price of all carpet sold by manufacturers to a California retailer or wholesaler or otherwise sold for use in the state. The assessment shall be clearly visible on invoices or functionally equivalent billing documents as a separate line item and shall be accompanied by a brief description of the assessment or a label approved by the department.

(B) Each retailer and wholesaler shall add the assessment to the purchase price of all carpet sold in the state. The assessment shall be clearly visible on invoices or functionally equivalent billing documents as a separate line item and shall be accompanied by a brief description of the assessment or a label approved by the department.

(4) A carpet stewardship organization shall not expend funds from the assessment for any of the following purposes:

(A) Penalties imposed pursuant to Section 42978.

(B) Costs associated with litigation against the state.

(C) Engineered municipal solid waste conversion, as defined in Section 40131.2, the use of cement kilns to burn carpet, or transformation, as defined in Section 40201.

(d) A carpet stewardship organization that submits a plan pursuant to this section shall consult with retailers and wholesalers in the development of the plan, in order to minimize the impacts of the plan on retailers and wholesalers.

(e) A carpet stewardship organization shall notify the department within 30 days after instituting a significant or material change to an approved carpet stewardship plan.

**SEC. 3.** Section 42972.1 is added to the Public Resources Code, to read:

**42972.1.** (a) The Director of Resources Recycling and Recovery shall appoint members to an advisory committee, which shall make recommendations on carpet stewardship plans submitted to the department pursuant to Section 42972. The Speaker of the Assembly and the Senate Committee on Rules shall each appoint one additional member to the advisory committee. The advisory committee may be composed of, among others, individuals in the environmental community, the solid waste industry, and local government, public or private representatives involved in the collection, processing, and recycling of carpet, and other interested parties as determined by the Director of Resources Recycling and Recovery. The Director of Resources Recycling and Recovery shall appoint to the advisory committee one member who represents carpet manufacturers and at least one member who is a representative of either the Southern California Resilient Floor and Decorative Covering Crafts Joint Apprenticeship and Training Committee or the Northern California Floor Covering Finishing Trades Institute Joint Apprenticeship Training Committee.

(b) A carpet stewardship organization or manufacturer, as applicable, shall provide to the advisory committee a copy of the carpet stewardship plan or amendments to the plan no less than 30 days before submitting the carpet stewardship plan or amendments to the plan to the department pursuant Section 42972. A carpet stewardship organization or manufacturer, as applicable, shall provide to the advisory committee a copy of the annual report required pursuant to Section 42976 no less than 30 days before submitting the annual report to the department. The advisory committee shall provide comments and recommendations to the carpet stewardship organization or manufacturer and to the department based on their review of the materials.

(c) A carpet stewardship organization or manufacturer, as applicable, shall incorporate to the extent feasible the advisory committee's recommendations into the carpet stewardship plan, amendments to the plan, or annual report before submitting the plan, amendments to the plan, or annual report to the department. If the carpet stewardship organization or manufacturer is unable to incorporate the recommendations, it shall provide a written explanation to the department and the advisory committee. The explanation shall detail whether the carpet stewardship organization or manufacturer plans to incorporate the recommendations into a subsequent carpet stewardship plan, subsequent amendments to the plan, or a subsequent annual report.

(d) A member of the advisory committee shall serve without compensation, but shall be reimbursed for actual and necessary travel and other expenses incurred in the performance of his or her official duties.

**SEC. 4.** Section 42972.2 is added to the Public Resources Code, to read:

**42972.2.** (a) The Legislature hereby declares that it is the goal of the state to reach a 24-percent recycling rate for postconsumer carpet by January 1, 2020, and to meet or exceed that rate continually thereafter.

(b) No sooner than January 1, 2020, and no less frequently than every three years thereafter, the department shall review and may adjust the recycling rate and program goals set forth in paragraph (2) of subdivision (a) of Section 42972, based on information included in carpet stewardship plans and annual reports, other information provided by carpet stewardship organizations, and economic and any other relevant information.

**SEC. 5.** Section 42972.5 of the Public Resources Code is amended to read:

**42972.5.** (a) Notwithstanding paragraph (1) of subdivision (c) of Section 42972, on and after July 1, 2011, but not on or after January 1, 2013, a manufacturer of carpet shall add a carpet stewardship assessment of five cents (\$0.05) per square yard to the purchase price of all carpet sold in the state by that manufacturer. The assessment added pursuant to this subdivision shall be remitted on a quarterly basis, as appropriate, to CARE or be retained by the individual manufacturer referred to in subparagraph (B) of paragraph (1) of subdivision (e) of Section 42971, for expenditure pursuant to subdivision (b).

(b) Prior to approval of a carpet stewardship plan, CARE or an individual manufacturer shall spend revenues from the assessment imposed pursuant to subdivision (a) only to implement early action measures that are consistent with the purposes of this chapter and that are designed to achieve measurable improvements in the landfill diversion and recycling of postconsumer carpet.

**SEC. 6.** Section 42973.5 is added to the Public Resources Code, to read:

**42973.5.** A carpet stewardship organization shall provide to the department all data necessary for the department to evaluate the effectiveness of the program as it is described in the carpet stewardship plan and in annual reports submitted by the carpet stewardship organization. This data shall include, but is not limited to, the costs of collection and of processing and recycling postconsumer carpet, and any other data necessary to determine whether the amount of the assessment, as proposed in the

stewardship plan pursuant to subdivision (c) of Section 42972, will be sufficient to achieve the goals of this chapter and the goals established in the carpet stewardship plan.

**SEC. 7.** Section 42974 of the Public Resources Code is amended to read:

**42974.** (a) The department shall enforce this chapter.

(b) On and after April 1, 2012, a manufacturer, wholesaler, or retailer that offers a carpet for sale in this state, or who offers a carpet for promotional purposes in this state, is not in compliance with this chapter and is subject to penalties pursuant to Section 42978, if the carpet is not subject to a plan that is submitted by an organization that includes the manufacturer of that carpet, which plan has been approved by the department pursuant to Section 42973.

(c) (1) On July 1, 2012, and not later than January 1 and July 1 annually thereafter, the department shall post a notice on its Internet Web site listing manufacturers that are in compliance with this chapter.

(2) A manufacturer that is not listed on the department's Internet Web site pursuant to this subdivision, but demonstrates to the satisfaction of the department that the manufacturer is in compliance with this chapter before the next notice is required to be posted, may request a certification letter from the department stating that the manufacturer is in compliance. The letter shall constitute proof of compliance with this chapter.

(d) A wholesaler or retailer that distributes or sells carpet shall monitor the department's Internet Web site to determine if the sale of a manufacturer's carpet is in compliance with the requirements of this chapter. Notwithstanding Section 42978, a wholesaler or retailer otherwise in compliance with this chapter shall be deemed in compliance with this section if, on the date the wholesaler or retailer ordered or purchased carpet, the manufacturer was listed as a compliant manufacturer on the department's Internet Web site.

(e) If a carpet stewardship plan that was previously approved by the department pursuant to Section 42973 terminates or is revoked, the department may allow a manufacturer that is no longer subject to that plan because the plan terminated or was revoked to continue to sell carpet in California for a period of one year after the plan terminated or was revoked, without being subject to penalties pursuant to this section or Section 42978, if the manufacturer does either of the following:

(1) The manufacturer continues to operate under the most recent approved carpet stewardship plan that the manufacturer was subject to.

(2) The manufacturer provides the department with an alternative carpet recycling plan governing its own products that are sold in California, and the department approves the manufacturer's alternative carpet recycling plan.

**SEC. 8.** Section 42975 of the Public Resources Code is amended to read:

**42975.** (a) In order to achieve compliance with this chapter, a carpet stewardship organization shall, on or before July 1, 2013, and annually thereafter, demonstrate to the department that it has achieved the amount and rates of recycling and a reduction in disposal of postconsumer carpet subject to its stewardship plan and the other goals included in the organization's plan pursuant to paragraph (2) of subdivision (a) of Section 42972. In determining compliance, the department shall consider all of the following:

(1) The baseline rate of compliance against which the demonstrated improvement is compared, including progress in achieving the goals outlined in subparagraphs (A) to (E), inclusive, of paragraph (2) of subdivision (a) of Section 42972.

(2) The quantifiable five-year goals and annual goals included in the carpet stewardship plan pursuant to paragraph (2) of subdivision (a) of Section 42972.

(3) Information provided in the organization's report to the department pursuant to Section 42976.

(b) If more than one organization submits a carpet stewardship plan pursuant to this chapter, the department shall use information submitted by the organization in its annual report pursuant to Section 42976 to determine to what extent the recycling rates, the reductions in disposal rates, and the achievement of the other goals included in the plan are attributable to each organization and shall determine compliance with this chapter accordingly.

**SEC. 9.** Section 42982 of the Public Resources Code is amended to read:

**42982.** The Department of General Services shall, to the extent feasible and within existing resources, take appropriate steps, including, but not limited to, revising relevant procurement rules, to ensure both of the following requirements are satisfied:

(a) Postconsumer carpet that is removed from state buildings is managed in a manner consistent with the purpose of this chapter.

(b) Carpet purchased by a state agency contains a minimum amount of postconsumer content that shall be determined by the Department of General Services and published in the State Contracting Manual by July 1, 2018.