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AB-729 Carpet recycling: carpet stewardship. (2019-2020)

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Assembly Bill No. 729

CHAPTER 680

An act to amend Sections 42971, 42972, 42974, 42977, 42978, and 42981 of, to add Section 42972.7 to, and to repeal Section 42972.5 of, the Public Resources Code, relating to recycling.

[Approved by Governor October 09, 2019. Filed with Secretary of State October 09, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 729, Chu. Carpet recycling: carpet stewardship.

(1) 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, and requires the department to approve or disapprove the plan. Existing law imposes a carpet stewardship assessment per unit of carpet sold in the state that is remitted by carpet manufacturers to the carpet stewardship organization and may be expended to carry out the organization's carpet stewardship plan.

This bill would, among other things, require a carpet stewardship organization to include in the carpet stewardship plan a contingency plan should the carpet stewardship plan expire without approval of a new carpet stewardship plan or should the carpet stewardship plan be revoked. The bill would require a carpet stewardship organization to set up a trust fund or an escrow account, into which the bill would require the organization to deposit all unexpended funds and ongoing consumer assessments, for use in the event that the carpet stewardship plan terminates or is revoked. The bill would require, if a carpet stewardship plan is revoked or terminated, the trustee or escrow agent to accept carpet stewardship assessment payments directly from manufacturers and to make payments from the trust fund or escrow account as the department directs, in writing, to implement the most recently approved carpet stewardship plan. The bill would authorize the department, if a new carpet stewardship plan has not been approved within one year after termination or revocation, to make modifications to the previously approved plan, as it deems necessary, and continue to direct payments from the trust fund or escrow account to implement the modified plan.

This bill would repeal certain provisions relating to the carpet stewardship assessment and would replace the assessment with differential assessments that take into account the financial burden that a particular carpet material has on the stewardship program, and the amount of postconsumer recycled content contained in a particular carpet, as prescribed.

(2) Existing law requires a carpet stewardship organization submitting a carpet stewardship plan to pay to the department a quarterly administrative fee, as specified. Existing law prohibits the total amount of the administrative fees paid for a calendar year from exceeding 5% of the aggregate assessments collected for the preceding calendar year.

This bill would repeal that prohibition.

(3) Existing law authorizes the department to administratively impose civil penalties on any person who is in violation of any provision of the carpet stewardship laws, of up to \$1,000 per day or \$10,000 per day if the violation is intentional, knowing, or

negligent.

This bill would increase the former penalty amount to \$5,000 per day.

(4) This bill would also make conforming changes and repeal obsolete provisions.

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

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 following definitions 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) "Carpet stewardship organization" or "organization" means either of the following:

(1) An organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)) that is 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.

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

(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 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 website 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, or internet website 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, the requirements of Section 42972.7, 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.

(7) Include a contingency plan should the plan expire without approval of a new plan or should the plan be revoked. The contingency plan shall demonstrate how the activities in the plan will continue to be carried out in the absence of a plan by the department through some other entity, such as an escrow company, consistent with Section 42972.7.

(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) In recognition that the material makeup and construction of postconsumer carpet affects the technical and economic recyclability of carpet, the funding mechanism required pursuant to paragraph (4) of subdivision (a) shall establish and be composed of a system of differential assessments that takes into account the financial burden that a particular carpet material has on the stewardship program, and the amount of postconsumer recycled content contained in a particular carpet. Based on market history and modeling, if a certain carpet material requires a higher subsidy to incentivize use in the marketplace, then that material shall have a proportionally higher assessment assigned to it. 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 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) It is the intent of the Legislature that the amount of the assessment be reduced by the stewardship organization as the carpet stewardship program is implemented over time and becomes more efficient.

(5) (A) If the amount of the assessment is insufficient to fund the carpet stewardship program, the stewardship organization shall submit a plan update to the department for approval, conditional approval, or disapproval to increase the assessment.

(B) If the assessment generates a fund balance at the end of a program year that is greater than one year's operating costs of the carpet stewardship program, the stewardship organization shall submit a plan update to the department for approval, conditional approval, or disapproval to reduce the assessment.

(6) 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 42972.5 of the Public Resources Code is repealed.

SEC. 4. Section 42972.7 is added to the Public Resources Code, to read:

42972.7. (a) (1) A carpet stewardship organization, as part of its carpet stewardship plan, shall set up a trust fund or an escrow account, into which it shall deposit all unexpended funds and ongoing consumer assessments, for use in accordance with this

section in the event that the plan terminates or is revoked.

(2) For purposes of this subdivision, "unexpended funds" means assessment money in the stewardship organization's accounts that the stewardship organization is not already obligated to pay pursuant to a contract, claim, or similar mechanism.

(b) If a carpet stewardship plan terminates or is revoked, the trustee or escrow agent of a trust fund or escrow account set up pursuant to subdivision (a) shall do both of the following, starting within 30 days:

(1) Accept carpet stewardship assessment payments directly from manufacturers into the trust fund or escrow account that would have been made to the stewardship organization prior to the carpet stewardship plan's termination or revocation.

(2) Make payments from the trust fund or escrow account as the department shall direct, in writing, to implement the most recently approved plan.

(c) If a new carpet stewardship plan has not been approved by the department within one year after termination or revocation, the department may make modifications to the previously approved plan, as it deems necessary, and continue to direct payments from the trust fund or escrow account in accordance with paragraph (2) of subdivision (b) to implement the modified plan.

(d) A trustee or escrow agent in possession of assessment funds shall, as directed by the department, transfer those funds to a successor carpet stewardship organization with an approved plan.

SEC. 5. 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 website listing manufacturers that are in compliance with this chapter.

(2) A manufacturer that is not listed on the department's internet website 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 website 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 website.

(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 and makes assessment payments to the trust fund or escrow account as provided for in paragraph (1) of subdivision (b) of Section 42972.7.

(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. 6. Section 42977 of the Public Resources Code is amended to read:

42977. (a) The carpet stewardship organization submitting a carpet stewardship plan shall pay the department a quarterly administrative fee. The department shall set the fee at an amount that, when paid by every carpet stewardship organization that submits a carpet stewardship plan, is adequate to cover the department's full costs of administering and enforcing this chapter, including any program development costs or regulatory costs incurred by the department prior to carpet stewardship plans being submitted. The department may establish a variable fee based on relevant factors, including, but not limited to, the portion of

carpets sold in the state by members of the organization compared to the total amount of carpet sold in the state by all organizations submitting a carpet stewardship plan.

(b) The total amount of fees collected annually pursuant to this section shall not exceed the amount necessary to recover costs incurred by the department in connection with the administration and enforcement of the requirements of this chapter.

(c) The department shall identify the direct development or regulatory costs it incurs pursuant to this chapter prior to the submittal of a carpet stewardship plan and shall establish a fee in an amount adequate to cover those costs, which shall be paid by a carpet stewardship organization that submits a carpet stewardship plan. The fee established pursuant to this subdivision shall be paid pursuant to the schedule specified in subdivision (d).

(d) A carpet stewardship organization subject to this section shall pay a quarterly fee to the department to cover the administrative and enforcement costs of the requirements of this chapter pursuant to subdivision (a) on or before July 1, 2012, and every three months thereafter and the applicable portion of the fee pursuant to subdivision (c) on July 1, 2012, and every three months thereafter through July 1, 2014.

(e) The department shall deposit the fees collected pursuant to this section into the Carpet Stewardship Account created pursuant to Section 42977.1.

SEC. 7. Section 42978 of the Public Resources Code is amended to read:

42978. (a) A civil penalty up to the following amounts may be administratively imposed by the department on any person who is in violation of any provision of this chapter:

(1) Five thousand dollars (\$5,000) per day.

(2) Ten thousand dollars (\$10,000) per day if the violation is intentional, knowing, or negligent.

(b) In assessing or reviewing the amount of a civil penalty imposed pursuant to subdivision (a) for a violation of this chapter, the department or the court shall consider all of the following:

(1) The nature and extent of the violation.

(2) The number and severity of the violation or violations.

(3) The economic effect of the penalty on the violator.

(4) Whether the violator took good faith measures to comply with this chapter and the period of time over which these measures were taken.

(5) The willfulness of the violator's misconduct.

(6) The deterrent effect that the imposition of the penalty would have on both the violator and the regulated community.

(7) Any other factor that justice may require.

SEC. 8. Section 42981 of the Public Resources Code is amended to read:

42981. (a) Except as provided in subdivision (b), any action by a carpet stewardship organization or its members that relates to any of the following is not a violation of the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), the Unfair Practices Act (Chapter 4 (commencing with Section 17000) of Part 2 of Division 7 of the Business and Professions Code), or the Unfair Competition Law (Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code):

(1) The creation, implementation, or management of a carpet stewardship plan approved by the department pursuant to Section 42973 and the types or quantities of carpet being recycled or otherwise managed as described in Section 42970.

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

(3) The establishment, administration, or disbursement of a carpet stewardship assessment as described in Section 42972.

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

(1) Fixes a price of or for carpet, except for any agreement related to a carpet stewardship assessment pursuant to a carpet stewardship plan approved by the department and otherwise in accordance with this chapter.

(2) Fixes the output of production of carpet.

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