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HOUSE BILL NO. 745

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Agriculture, Chesapeake and Natural Resources on February 7, 2024)

(Patron Prior to Substitute—Delegate Laufer)

A BILL to amend the Code of Virginia by adding in Chapter 14 of Title 10.1 an article numbered 3.8, consisting of sections numbered 10.1-1425.40 through 10.1-1425.45, relating to mattress stewardship program established; civil penalty.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 14 of Title 10.1 an article numbered 3.8, consisting of sections numbered 10.1-1425.40 through 10.1-1425.45, as follows:

Article 3.8.

Mattress Stewardship Program.

§ 10.1-1425.40. Definitions.

As used in this article, unless the context requires a different meaning:

"Consumer" means an owner or a purchaser of a mattress, including a person, business, corporation, limited partnership, nonprofit organization, or governmental entity in the Commonwealth, and including the ultimate purchaser, owner, or lessee of a mattress. "Consumer" does not include a government organization or other party that obtains one or more used mattresses in the course of collecting used mattresses for recycling for the purposes of this article or through the ordinary collection and handling of municipal solid waste.

"Discarded mattress" means any mattress that a consumer discarded, intends to discard, or is abandoned in the Commonwealth and that is unacceptable for recycling because it is contaminated, wet, crushed, or would otherwise pose a health or safety risk to personnel or equipment.

"Foundation" means a ticking-covered structure used to support a mattress or sleep surface. The structure may include constructed frames, foam, box springs, or other materials, used alone or in combination with other products.

"Mattress" means 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 on. "Mattress" includes a foundation. "Mattress" does not include:

- 1. An unattached mattress pad or topper that is designed to be used on top of or in addition to a mattress;
- 2. A waterbed, air mattress, or any other product that contains liquid-filled or gas-filled ticking and that does not contain upholstery material between the ticking and the mattress core;
- 3. A carriage, basket, dressing table, stroller, playpen, infant carrier, lounge pad, crib bumper, crib mattress, bassinet mattress, or any other product manufactured for young children; or
- 4. A sleeping bag, pillow, futon, sleeper sofa, fold-out sofa bed, mattress foundation, car bed, or any furniture that otherwise does not contain a detachable mattress.

"Mattress core" means the principal support system that is present in a mattress, including springs, foam, an air bladder, a water bladder, or resilient filling.

"Mattress recycling fee" means the uniform per unit amount added to the price of a new or renovated mattress at the point of sale to a consumer, collected by a retailer, and remitted to the mattress recycling organization to fund the mattress stewardship program by distributing the organization's costs uniformly over all mattresses sold in the Commonwealth.

"Mattress recycling organization" or "organization" means a nonprofit organization formed by a qualified industry association to implement a mattress stewardship program.

"Mattress recycling plan" or "plan" means the plan for recycling discarded mattresses developed by the mattress recycling organization and approved by the Department.

"Mattress stewardship program" or "program" means the program to recycle mattresses discarded in the Commonwealth established in § 10.1-1425.41.

"Producer" means (i) a manufacturer of a mattress that sells, offers for sale, or distributes mattresses to consumers in the Commonwealth under the producer's own name or brand or (ii) an individual that imports mattresses into the United States to sell, offer for sale, or distribute in the Commonwealth. "Producer" includes the owner of a mattress trademark or brand.

"Qualified industry association" means the International Sleep Products Association or a successor of that organization, or a group of mattress producers that collectively represent at least 35 percent of the volume of mattresses manufactured in the United States.

"Recycle" or "recycling" means the process of collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise become solid waste and returning them to the economic mainstream in the form of raw material for new, reused, or reconstituted products that meet the quality standards necessary to

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60 *be used in the marketplace.*

61 *"Recycler" means a person that engages in the manual or mechanical separation of mattresses to*
 62 *substantially recover components and commodities contained in mattresses for the purpose of recycling.*

63 *"Renovate" means to alter a discarded mattress for resale in compliance with any regulations*
 64 *promulgated pursuant to § 32.1-12 by the Board of Health through replacing the ticking or filling, adding*
 65 *additional filling, or replacing components of the discarded mattress with new or recycled materials.*
 66 *"Renovate" does not include (i) stripping a discarded mattress of the ticking or filling without adding new*
 67 *material or (ii) the sanitization or sterilization of a discarded mattress without other alteration to the*
 68 *discarded mattress.*

69 *"Renovator" means a person who renovates used mattresses for the purpose of sale, or offering for sale,*
 70 *in the Commonwealth in compliance with any regulations promulgated pursuant to § 32.1-12 by the Board of*
 71 *Health.*

72 *"Retailer" means any person that sells or offers for sale mattresses to consumers in the Commonwealth*
 73 *through any means, including remote offering, sales outlets or catalogs, electronically through the Internet,*
 74 *by telephone, or through the mail. Such means also include sales or offers for sale to lodging establishments,*
 75 *educational facilities, health facilities, and similar types of customers.*

76 *"Sale" or "sell" means any transfer of title, including remote sales conducted through sales outlets,*
 77 *catalogues, or the Internet or any other similar electronic means.*

78 *"Sanitization" means the process of treating renovated mattresses in accordance with processes approved*
 79 *by the State Health Commissioner.*

80 *"Sterilization" means the mitigation of any deleterious substances or organisms, including pathogens that*
 81 *cause human disease, fungi, and insects, from a mattress or filling using a chemical or heat process.*

82 *"Ticking" means the outermost layer of fabric or related material of a mattress. "Ticking" does not*
 83 *include another layer of fabric or related material that is quilted together with, or otherwise attached to, the*
 84 *outermost layer of fabric or related material.*

85 **§ 10.1-1425.41. Mattress stewardship program.**

86 *A. To the extent feasible, cost-effective, and environmentally efficient, the mattress recycling program will*
 87 *increase the recycling of commercially useful materials in discarded mattresses and substantially reduce*
 88 *public agency costs for the end-of-life management of discarded mattresses by requiring mattress producers*
 89 *that sell or offer mattresses for sale to consumers in the Commonwealth to develop, finance, and implement a*
 90 *program in accordance with this article to collect and recycle mattresses discarded in the Commonwealth*
 91 *using existing solid waste collection systems and other mattress collection methods.*

92 *B. On or before January 1, 2026, a qualified industry association may establish an organization to*
 93 *develop, implement, and administer the mattress stewardship program in the Commonwealth established*
 94 *pursuant to this article and request that the Department certify such organization as a mattress recycling*
 95 *organization. Within 30 days of receipt of a request for certification, the Department shall notify the*
 96 *requesting qualified industry association of its decision whether or not to certify such organization as a*
 97 *mattress recycling organization.*

98 *C. On or before June 1, 2026, each producer, retailer, and renovator shall register with the mattress*
 99 *recycling organization. Each producer shall identify the mattress brand or brands that it sells or offers for*
 100 *sale to consumers in the Commonwealth.*

101 *D. On or before July 1, 2026, the certified mattress recycling organization shall submit to the Department*
 102 *for approval a plan for the establishment of a mattress stewardship program. Such plan shall:*

103 *1. Identify the producers, brands, retailers, and renovators registered with the organization;*

104 *2. Describe how the organization will collect, transport, and recycle discarded mattresses, including*
 105 *contracting with third parties to provide some or all of those services, and the approximate time following*
 106 *implementation of the program required to implement various aspects of the approved program;*

107 *3. Propose a uniform per unit mattress recycling fee that is sufficient to cover all costs of establishing and*
 108 *administering the program, including a financial reserve sufficient to operate the program over a multiyear*
 109 *period of time in a fiscally prudent and responsible manner, and describe how the retailer will collect such*
 110 *fee from the consumer and remit such fees to the organization;*

111 *4. Describe sound management practices that the organization will communicate to third parties under*
 112 *contract with the organization that the third parties may use to protect worker health and safety;*

113 *5. Describe the criteria entities under contract with the organization will apply in determining whether a*
 114 *mattress should be rejected as unacceptable for recycling because it is contaminated, wet, crushed, or would*
 115 *otherwise pose a health or safety risk to personnel or equipment, and how the solid waste sector would like to*
 116 *dispose of such mattresses;*

117 *6. Describe how the stewardship organization will (i) work with existing recyclers and mattress collection*
 118 *infrastructure; (ii) consult with state and local governments and other stakeholders; and (iii) conduct*
 119 *research as necessary to improve the collection and recycling of mattresses, including research to identify*
 120 *new markets and uses for recycled material;*

121 *7. Describe how the organization will solicit, recruit, and compensate mattress waste management entities*

122 including (i) existing municipal, private, and nonprofit entities in the Commonwealth that transport, handle,
123 or recycle discarded mattresses; (ii) minority-owned, woman-owned, and veteran-owned business
124 enterprises; and (iii) businesses that prioritize the training and hiring of individuals who are reentering
125 society after imprisonment, experiencing homelessness and housing insecurity, in addiction recovery,
126 disabled, or are otherwise socioeconomically or historically marginalized or disadvantaged;

127 8. Propose an operating budget for the partial calendar year between the date on which the program is
128 launched and the end of such calendar year and the following full calendar year. Such budgets shall provide
129 the basis for the proposed per unit mattress recycling fee required by subdivision 3. Such budgets shall
130 include (i) preoperational expenses that the mattress recycling organization incurred in developing the
131 proposed plan, costs of organizing the collection and recycling networks, and costs of related actions
132 necessary to prepare the program for operation and (ii) a financial reserve sufficient to operate the program
133 over a multiyear period of time in a fiscally prudent and responsible manner;

134 9. Describe how the organization will educate consumers, producers, and retailers to promote the
135 recycling of discarded mattresses and options available to consumers for recycling discarded mattresses;

136 10. Provide a plan in case of closure of the program;

137 11. Describe how the program will minimize public sector involvement in, and financial responsibility for,
138 the management of discarded mattresses by (i) promoting mattress recycling and (ii) negotiating agreements
139 to collect, transport, and recycle mattresses and their components;

140 12. Describe how the program will provide for convenient mattress collection in the Commonwealth by (i)
141 providing free access to drop off locations for mattresses from residential, commercial, institutional, or other
142 sources; (ii) providing free collection of discarded mattresses from any person, municipal transfer station, or
143 other solid waste facility in the Commonwealth that has accumulated and segregated a minimum of 100
144 mattresses discarded in the Commonwealth for collection at one time; and (iii) perform geographic modeling
145 analysis to determine the efficient number and placement of sites for collecting discarded mattresses such
146 that, by the end of the second year of the program's operation, at least one collection site will be located
147 within a 25-mile radius of 75 percent of the Commonwealth's residents;

148 13. Include performance goals for (i) based on data that the Department collects annually from solid
149 waste facilities in the Commonwealth and other sources, the percentage of discarded mattresses that are
150 collected by recyclers participating in the program; (ii) the percentage of the weight of discarded mattresses
151 processed by recyclers participating in the program that is recycled; (iii) based on data that the Department
152 collects from renovators operating in the Commonwealth, the percentage of discarded mattresses that are
153 renovated; and

154 14. Include other information requested by the Department that is reasonably related to compliance with
155 the recycling plan and the requirements of this article and that the organization can reasonably provide.

156 E. An independent certified public accountant shall evaluate at the organization's expense the mattress
157 recycling fee proposed in the plan, and any subsequent changes to such fee that the organization proposes, to
158 confirm whether such fee covers the cost of establishing and administering the program but does not exceed
159 such costs, including a financial reserve sufficient to operate the program over a multiyear period of time in
160 a fiscally prudent and responsible manner.

161 F. The Department shall review the plan proposed by the organization and the fee evaluation report
162 prepared by the independent financial auditor pursuant to subsection E.

163 G. The Department shall (i) approve the plan proposed by the organization if it determines that the plan,
164 including the proposed budget and proposed mattress recycling fee, complies with the requirements of
165 subsection E and (ii) list on its website the producers, brands, retailers, and renovators that are registered
166 with the organization.

167 H. The mattress recycling organization that submits a proposed plan for approval shall pay to the
168 Department (i) a plan review fee that reimburses the Department's actual cost of plan review and (ii) an
169 annual fee that reimburses the Department for its actual costs associated with program compliance
170 oversight, including the Department's review of the organization's annual report, but excluding costs
171 incurred by the Department in connection with the Mattress Stewardship Program Advisory Board.

172 I. The Department shall reevaluate the plan approved pursuant to subsection G five years following
173 approval, and may reevaluate the plan sooner if the Department concludes that the organization has not met
174 its targets or a change in circumstances warrants reevaluation. If necessary, the organization may propose
175 changes to the plan for the Department's approval. Thereafter, the Department shall reevaluate the plan
176 every five years.

177 J. Following the Department's approval of the plan, including the budget and mattress recycling fee:

178 1. The organization shall implement its mattress stewardship plan within one year after approval of the
179 plan.

180 2. At least 90 days before the date on which program implementation will commence, the organization
181 shall notify all producers, retailers, and renovators of that implementation date and their obligations under
182 the plan.

183 3. Upon plan implementation:

184 a. No producer or retailer shall sell or offer for sale a brand of mattress to any person in the
185 Commonwealth unless both the producer of the brand and the retailer are registered with the organization. A
186 retailer shall be considered compliant with this requirement if (i) it is registered with the organization and
187 (ii) on the date the retailer orders a mattress from a producer, the producer is listed on the Department's
188 website as having registered with the organization.

189 b. Each producer, retailer, or renovator that sells a mattress to a consumer in the Commonwealth shall
190 add the mattress recycling fee to the purchase price of the mattress. Such fee shall be clearly visible as a
191 separate line item on the invoice, receipt, or functionally equivalent billing document that the seller provides
192 to the consumer. The seller shall remit such fee collected to the mattress recycling organization. The mattress
193 recycling organization shall determine the rules and procedures that are necessary and proper to implement
194 the collection of the fee in a fair, efficient, and lawful manner.

195 c. The mattress recycling organization shall provide producers, retailers, renovators, and consumers with
196 educational materials regarding the program that include (i) information regarding available end-of-life
197 management options offered through such program for discarded mattresses and (ii) information that notifies
198 consumers that a fee to cover the costs of implementing such program is added to the purchase price of all
199 mattresses sold to consumers in the Commonwealth. A retailer shall provide such educational materials to
200 consumers at the point of sale.

201 K. 1. In the first 12 months during which the mattress recycling fee is collected, the mattress recycling
202 organization may change the amount of the mattress recycling fee and shall provide no less than 90 days'
203 notice to the public before any change in the amount of such fee takes place.

204 2. After one year from the date when the collection of the mattress recycling fee commences, the mattress
205 recycling organization may change the amount of such fee, but the organization shall not change the amount
206 of such fee more frequently than annually unless the organization provides good cause to change the fee
207 earlier and shall provide no less than 180 days' notice to the public before the change in the amount of such
208 fee takes place.

209 3. The mattress recycling organization may conduct an audit of those parties required to remit the fee to
210 the mattress recycling organization to verify that the fees paid are proper and accurate and to confirm that
211 all parties required by this article to pay or collect the fee are paying or collecting the proper amount. The
212 audit shall be carried out in accordance with generally accepted auditing practices and shall be limited in
213 scope to confirm whether the fee has been properly collected on all sales of mattresses to consumers in the
214 Commonwealth. The mattress recycling organization shall hire independent third-party auditors to conduct
215 the audits. The organization shall provide to the Department a copy of such audit reports.

216 L. No mattress collection site that participates in a mattress stewardship program shall charge any
217 additional fee for accepting a discarded mattress from consumers for recycling, unless the site itself must
218 dispose of a mattress that is unacceptable for recycling because it is contaminated, wet, crushed, or would
219 otherwise pose a health or safety risk to personnel or equipment.

220 M. An action taken by a mattress recycling organization or entities registered with the organization that
221 relates to any of the following is not a violation of the Commonwealth's antitrust, restraint of trade, or unfair
222 competition laws:

223 1. The creation, implementation, or management of a mattress recycling plan approved by the
224 Department and the types or quantities of used mattresses recycled or otherwise managed pursuant to such
225 plan;

226 2. The cost and structure of an approved plan; or

227 3. The establishment, administration, collection, or disbursement of the mattress recycling fees associated
228 with funding the implementation of the mattress recycling organization and related functions the organization
229 performs.

230 This subsection shall not authorize any person to engage in activities or to conspire to engage in activities
231 that constitute per se violations of state or federal antitrust laws that are not otherwise authorized by this
232 article.

233 **§ 10.1-1425.42. Annual reporting requirements.**

234 A. Beginning June 1 of the year following the calendar year during which the mattress recycling
235 organization implemented an approved plan, and on June 1 annually thereafter, the mattress recycling
236 organization shall submit to the Department and publish online a report that details its mattress stewardship
237 program during the preceding calendar year, including the following:

238 1. A description of the methods used to collect, transport, and process mattresses discarded in the
239 Commonwealth;

240 2. The quantity and type of discarded mattresses collected in the Commonwealth by (i) collection site or
241 collection method and (ii) method of disposition, including reuse, recycling, and other methods of processing,
242 or method of disposal if mattresses were found unacceptable for recycling or for other reasons;

243 3. The quantity of each category of materials recycled and the quantity of otherwise disposed of
244 materials;

245 4. The uses for the recycled materials;

- 246 5. The number of illegally dumped mattresses, based on data the Department collects from localities in
247 the Commonwealth;
- 248 6. The audit report of the mattress recycling organization's accounting books conducted at the
249 organization's expense by an independent certified public accountant retained by the organization;
- 250 7. Samples of educational materials used to inform consumers about mattress recycling, a summary of
251 public education efforts, and an evaluation of the effectiveness of such educational materials and public
252 education efforts;
- 253 8. An evaluation of why unrecycled mattresses were not recycled;
- 254 9. The total number of mattresses sold to consumers in the Commonwealth in the previous calendar year,
255 based on data that the mattress recycling organization collects in connection with the mattress recycling fee
256 remittance process;
- 257 10. Strategies to address discarded mattresses that were not included in such program and that were
258 illegally dumped;
- 259 11. Reports on research activities and pilot programs conducted or funded by the mattress recycling
260 organization;
- 261 12. An analysis of how the data required by this subsection has changed over time;
- 262 13. An evaluation of the effectiveness of methods and processes used to achieve the goals of such
263 program, including information on progress made toward achieving such goals, an explanation of why any
264 goals were not met during the previous calendar year, and information on any efforts that will be taken to
265 improve progress toward meeting such goals in the future, if applicable;
- 266 14. Recommendations for any changes to such program, including information relevant to compliance
267 with the plan; and
- 268 15. Other information requested by the Department that is reasonably related to compliance with the
269 recycling plan and the requirements of this article and that the organization can reasonably provide.
- 270 B. The Department shall review the annual report and (i) evaluate the total revenues and expenses of the
271 mattress stewardship program to determine whether the revenue earned from the mattress recycling fee
272 meets or exceeds the costs of the program, including a financial reserve sufficient to operate the program
273 over a multiyear period of time in a fiscally prudent and responsible manner, and (ii) determine whether the
274 program is being implemented in accordance with the organization's approved plan. If the Department
275 determines that the annual report complies with the requirements of subsection A and that the revenue
276 earned from the mattress recycling fee does not exceed the costs of the program, the Department shall
277 approve the annual report. The mattress recycling organization shall post the approved annual report on the
278 organization's website. If the Department determines that the annual report does not comply with the
279 requirements of subsection A or that the revenue earned from the mattress recycling fee exceeds the costs of
280 the program, the mattress recycling organization shall submit to the Department a plan on how the
281 organization will address the noncompliance in the upcoming year.
- 282 C. Financial, production, or sales data reported to the Department by a producer, retailer, mattress
283 recycling organization, or recycler shall be kept confidential by the Department and shall not be subject to
284 public inspection. The Department may release summary data that does not disclose financial, production, or
285 sales data of a producer, retailer, or mattress recycling organization.
- 286 **§ 10.1-1425.43. Mattress Stewardship Program Advisory Board established; membership; duties and**
287 **responsibilities; meetings; annual report.**
- 288 A. There is hereby established the Mattress Stewardship Program Advisory Board, referred to in this
289 section as "the Advisory Board," for the purpose of advising the Department on the proper implementation
290 and sustainability of the mattress stewardship program. The Department shall provide organizational staff
291 support for the Advisory Board.
- 292 B. The Advisory Board shall have a total membership of nine members. Members of the Advisory Board
293 shall be appointed as follows: the Director of the Department of Environmental Quality, or the Director's
294 designee; the State Health Commissioner, or the Commissioner's designee; the Secretary of Commerce and
295 Trade, or the Secretary's designee; and six members appointed by the Governor to include one representative
296 of mattress retailers; one representative of the mattress manufacturing industry; one mattress recycler; one
297 representative of an environmental advocacy group; one representative of the Virginia Association of
298 Counties; and one consumer representative. Members of the Advisory Board shall be citizens of the
299 Commonwealth.
- 300 C. Advisory Board members shall serve a term of four years with a maximum of two consecutive terms.
301 The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in
302 determining the member's eligibility for reappointment. Vacancies shall be filled in the same manner as the
303 original appointments. All members may be reappointed.
- 304 D. The Advisory Board shall have the following duties and responsibilities:
- 305 1. Review and evaluate the structure, financing, and other aspects of the mattress stewardship program;
- 306 2. Consult with and advise producers or representative organizations as they prepare the mattress

307 *stewardship program plan;*

308 *3. Receive and review the mattress stewardship program plans submitted pursuant to § 10.1-1425.41 and*
309 *make recommendations to the Department regarding mattress stewardship program plan approval;*

310 *4. Receive and review annual reports submitted pursuant to § 10.1-1425.42 and make recommendations*
311 *to the Department regarding the need for any plan amendments or other requirements based on the Advisory*
312 *Board's review of such reports; and*

313 *5. Review and comment on draft regulations relevant to the implementation of the mattress stewardship*
314 *program.*

315 *E. The Advisory Board shall (i) meet at least quarterly until the initial mattress stewardship program*
316 *plans have been approved, and semiannually thereafter, and (ii) report annually by December 1 any findings*
317 *and recommendations to the General Assembly and the Governor. The meetings of the Advisory Board shall*
318 *be held at the call of the chairman or whenever the majority of the members so request.*

319 *F. The Advisory Board shall elect a chair and vice-chair from among its membership by a simple majority*
320 *vote. A majority of the members shall constitute a quorum.*

321 *G. The Advisory Board may adopt bylaws for the operation of the Advisory Board's business in*
322 *accordance with this article.*

323 **§ 10.1-1425.44. Powers and duties of the Department.**

324 *A. The Department may cooperate with departments, agencies, and other equivalent bodies in other states*
325 *in order to further the objectives of this article.*

326 *B. The Department shall require the mattress recycling organization to translate all educational materials*
327 *into the languages spoken by local populations.*

328 *C. The Department shall require solid waste facilities, renovators, localities, and other relevant entities to*
329 *report to the Department any information that the mattress recycling organization will need to prepare its*
330 *annual report and will provide aggregated data to the organization for this purpose.*

331 *D. The Department shall make, adopt, promulgate, and enforce such regulations as may be necessary to*
332 *carry out the provisions of this article.*

333 **§ 10.1-1425.45. Civil penalties for violations of the mattress stewardship program.**

334 *A. Any retailer that violates the provisions of this article is subject to a civil penalty not to exceed \$100*
335 *per day for each day of violation.*

336 *B. A producer or mattress recycling organization that violates the provisions of this article is subject to a*
337 *civil penalty not to exceed \$1,000 per day for each day of violation. In evaluating whether to impose a civil*
338 *penalty, and in determining the amount of such civil penalty, the Department shall take into account the*
339 *materiality of the violation, whether the violation is wholly or partially the result of factors beyond the*
340 *control of the producer or mattress recycling organization, whether the producer or mattress recycling*
341 *organization has made a good faith effort to comply with the provisions of this article, and whether the*
342 *violation can be addressed through means other than a civil penalty.*