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SENATE BILL NO. 990

Offered January 8, 2025

Prefiled January 7, 2025

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; report; civil penalties.*

Patrons—Williams Graves and Head

Referred to Committee on Agriculture, Conservation and Natural Resources

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:

"Advisory Board" means the Mattress Stewardship Program Advisory Board established in § 10.1-1425.43.

"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" means a nonprofit organization formed by a qualified industry association to implement the 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

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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 be used in the marketplace.

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

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

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

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

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

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

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

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

§ 10.1-1425.41. Mattress Stewardship Program.

A. On or before January 1, 2027, a qualified industry association may establish an organization to develop, implement, and administer the Mattress Stewardship Program in the Commonwealth established pursuant to this article and request that the Department certify such organization as a mattress recycling organization. Within 30 days of receipt of such request, the Department shall notify the qualified industry association of its decision whether to certify such mattress recycling organization.

B. On or before June 1, 2027, each producer, retailer, and renovator shall register with the mattress recycling organization. Each producer shall identify each mattress brand that it sells or offers for sale to consumers in the Commonwealth.

C. On or before July 1, 2027, the certified mattress recycling organization shall submit a mattress recycling plan to the Department for its approval for the establishment of the Program. Such plan shall:

1. Identify the producers, brands, retailers, and renovators registered with the mattress recycling organization;

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

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

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

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

6. Describe how the stewardship organization shall (i) work with existing recyclers and mattress collection infrastructure; (ii) consult with state and local governments and other stakeholders; and (iii) conduct research as necessary to improve the collection and recycling of mattresses, including research to

identify new markets and uses for recycled material;

7. Describe how the mattress recycling organization shall solicit, recruit, and compensate mattress waste management entities, including (i) existing municipal, private, and nonprofit entities in the Commonwealth that transport, handle, or recycle discarded mattresses; (ii) minority-owned, woman-owned, and veteran-owned business enterprises; and (iii) businesses that prioritize the training and hiring of individuals who are reentering society after imprisonment, experiencing homelessness and housing insecurity, in addiction recovery, disabled, or are otherwise socioeconomically or historically marginalized or disadvantaged;

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

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

10. Provide a plan in case of closure of the Program;

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

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

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

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

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

E. The Department shall review the plan proposed by the mattress recycling organization and the fee evaluation report prepared by the independent financial accountant pursuant to subsection D. The Department shall (i) approve the plan proposed by the mattress recycling organization if it determines that the plan, including the proposed budget and proposed mattress recycling fee, complies with the requirements of subsection D and (ii) list on its website the producers, brands, retailers, and renovators that are registered with the mattress recycling organization. The Department shall reevaluate the approved plan five years following the approval and may reevaluate the plan sooner if the Department concludes that the mattress recycling organization has not met its targets or a change in circumstances warrants reevaluation. If necessary, the mattress recycling organization may propose changes to the plan for the Department's approval. Thereafter, the Department shall reevaluate the plan every five years.

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

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

1. The mattress recycling organization shall implement its plan within one year after approval of such plan.

2. At least 90 days before the date on which Program implementation will commence, the mattress

recycling organization shall notify all producers, retailers, and renovators of that implementation date and their obligations under the plan.

3. Upon plan implementation:

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

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

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

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

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

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

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

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

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

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

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

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

K. To the extent feasible, cost-effective, and environmentally efficient, the mattress recycling organization shall ensure the Program increases the recycling of commercially useful materials in discarded mattresses by requiring mattress producers that sell or offer mattresses for sale to consumers in the Commonwealth to develop, finance, and implement the Program in accordance with this article to collect and recycle mattresses discarded in the Commonwealth using existing solid waste collection systems and other mattress collection methods.

§ 10.1-1425.42. Annual reporting requirements.

A. Beginning June 1 of the year following the calendar year during which the mattress recycling

organization implements an approved plan, and annually thereafter, the mattress recycling organization shall submit to the Department and publish online a report that details the Program during the preceding calendar year, including the following:

1. A description of the methods used to collect, transport, and process mattresses discarded in the Commonwealth;
2. The quantity and type of discarded mattresses collected in the Commonwealth by (i) collection site or collection method and (ii) method of disposition, including reuse, recycling, and other methods of processing, or method of disposal if mattresses were found unacceptable for recycling or for other reasons;
3. The quantity of each category of materials recycled and the quantity of otherwise disposed of materials;
4. The uses for the recycled materials;
5. The number of illegally dumped mattresses, based on data the Department collects from localities in the Commonwealth;
6. The audit report of the mattress recycling organization's accounting books conducted at the mattress recycling organization's expense by an independent certified public accountant retained by the organization;
7. Samples of educational materials used to inform consumers about mattress recycling, a summary of public education efforts, and an evaluation of the effectiveness of such educational materials and public education efforts;
8. An evaluation of why unrecycled mattresses were not recycled;
9. The total number of mattresses sold to consumers in the Commonwealth in the previous calendar year, based on data that the mattress recycling organization collects in connection with the mattress recycling fee remittance process;
10. Strategies to address discarded mattresses that were not included in the Program and that were illegally dumped;
11. Reports on research activities and pilot programs conducted or funded by the mattress recycling organization;
12. An analysis of how the data required by this subsection has changed over time;
13. An evaluation of the effectiveness of methods and processes used to achieve the goals of the Program, including information on progress made toward achieving such goals, an explanation of why any goals were not met during the previous calendar year, and information on any efforts that will be taken to improve progress toward meeting such goals in the future, if applicable;
14. Recommendations for any changes to the Program, including information relevant to compliance with the plan; and
15. Other information requested by the Department that is reasonably related to the mattress recycling plan and the requirements of this article and that the mattress recycling organization can reasonably provide.

B. The Department shall review the annual report and (i) evaluate the total revenues and expenses of the Program to determine whether the revenue earned from the mattress recycling fee meets or exceeds the costs of the Program, including a financial reserve sufficient to operate the Program over a multiyear period of time in a fiscally prudent and responsible manner, and (ii) determine whether the Program is being implemented in accordance with the mattress recycling organization's approved plan. If the Department determines that the annual report complies with the requirements of subsection A and that the revenue earned from the mattress recycling fee does not exceed the costs of the Program pursuant to this section, the Department shall approve the annual report. The mattress recycling organization shall post the approved annual report on the organization's website. If the Department determines that the annual report does not comply with the requirements of subsection A or that the revenue earned from the mattress recycling fee exceeds the costs of the Program, the mattress recycling organization shall submit to the Department a plan on how the organization shall address the noncompliance in the upcoming year.

C. Financial, production, or sales data reported to the Department by a producer, retailer, mattress recycling organization, or recycler shall be kept confidential by the Department and shall not be subject to public inspection. The Department may release summary data that does not disclose financial, production, or sales data of a producer, retailer, or mattress recycling organization.

§ 10.1-1425.43. Mattress Stewardship Program Advisory Board; membership; duties and responsibilities; meetings; annual report.

A. There is hereby established the Mattress Stewardship Program Advisory Board for the purpose of advising the Department on the proper implementation and sustainability of the Program. The Department shall provide organizational staff support for the Advisory Board.

B. The Advisory Board shall have a total membership of nine members. Members of the Advisory Board shall be appointed as follows: the Director, or the Director's designee; the State Commissioner of Health, or the Commissioner's designee; the Secretary of Commerce and Trade, or the Secretary's designee; and six members appointed by the Governor to include one representative of mattress retailers; one representative of

304 the mattress manufacturing industry; one mattress recycler; one representative of an environmental
305 advocacy group; one representative of the Virginia Association of Counties; and one consumer
306 representative. Members of the Advisory Board shall be citizens of the Commonwealth.

307 C. Advisory Board members shall serve a term of four years with a maximum of two consecutive terms.
308 The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in
309 determining the member's eligibility for reappointment. Vacancies shall be filled in the same manner as the
310 original appointments. All members may be reappointed.

311 D. The Advisory Board shall have the following duties and responsibilities:

312 1. Review and evaluate the structure, financing, and other aspects of the Program;

313 2. Consult with and advise producers or representative organizations as they prepare the mattress
314 recycling plan;

315 3. Receive and review the mattress recycling plans submitted pursuant to § 10.1-1425.41 and make
316 recommendations to the Department regarding mattress recycling plan approval;

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

320 5. Review and comment on draft regulations relevant to the implementation of the Program.

321 E. The Advisory Board shall elect a chairman and vice-chairman from among its membership by a simple
322 majority vote. A majority of the members shall constitute a quorum.

323 F. The Advisory Board shall (i) meet at least quarterly until the initial mattress recycling plan has been
324 approved, and semiannually thereafter, and (ii) report annually by December 1 any findings and
325 recommendations to the General Assembly and the Governor. The meetings of the Advisory Board shall be
326 held at the call of the chairman or whenever the majority of the members so request.

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

329 **§ 10.1-1425.44. Powers and duties of the Department; regulations.**

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

332 B. The Department shall require the mattress recycling organization to translate all educational materials
333 into any language that is spoken by a language minority group covered under subsection A of § 24.2-128.

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

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

339 **§ 10.1-1425.45. Civil penalties for violations of the Program.**

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

342 B. A producer or mattress recycling organization that violates the provisions of this article is subject to a
343 civil penalty not to exceed \$1,000 per day for each day of violation.

344 C. In evaluating whether to impose a civil penalty pursuant to subsection A or B, and in determining the
345 amount of such civil penalty, the Department shall take into account the materiality of the violation, whether
346 the violation is wholly or partially the result of factors beyond the control of the producer or mattress
347 recycling organization, whether the producer or mattress recycling organization has made a good faith effort
348 to comply with the provisions of this article, and whether the violation can be addressed through means other
349 than a civil penalty.