

HOUSE BILL NO. 86

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Agriculture, Chesapeake and Natural Resources
on _____)

(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 10.1-1425.43, relating to Mattress Stewardship Program established; report.

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 10.1-1425.43, 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 or 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 risk to the consumer's health, safety, 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*

33 *does not contain upholstery material between the ticking and the mattress core;*

34 *3. A carriage, basket, dressing table, stroller, playpen, infant carrier, lounge pad, crib bumper, crib*
35 *mattress, bassinet mattress, or any other product manufactured for young children; or*

36 *4. A sleeping bag, pillow, futon, sleeper sofa, fold-out sofa bed, car bed, or any furniture that otherwise*
37 *does not contain a detachable mattress.*

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

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

44 *"Mattress recycling organization" means a nonprofit organization formed by a qualified industry*
45 *association to implement the Mattress Stewardship Program.*

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

48 *"Mattress Stewardship Program" or "Program" means the program to recycle mattresses discarded in the*
49 *Commonwealth established in § 10.1-1425.41.*

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

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

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

promulgated pursuant to § 32.1-12 by the State 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 State 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 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 certified 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:

- 95 1. Identify the producers, brands, retailers, and renovators registered with the mattress recycling
96 organization;
- 97 2. Describe how the mattress recycling organization shall collect, transport, and recycle discarded
98 mattresses;
- 99 3. Propose a uniform per unit mattress recycling fee that is sufficient to cover all costs of establishing and
100 administering the Program, including a financial reserve;
- 101 4. Describe how the mattress recycling stewardship organization shall (i) work with existing recyclers
102 and mattress collection infrastructure and (ii) consult with state and local governments and other
103 stakeholders;
- 104 5. Describe how the mattress recycling organization shall educate consumers, producers, and retailers to
105 promote the recycling of discarded mattresses and options available to consumers for recycling discarded
106 mattresses;
- 107 6. Describe how the Program will provide for convenient mattress collection in the Commonwealth;
- 108 7. Include performance goals; and
- 109 8. Include other information requested by the Department that is reasonably related to the mattress
110 recycling plan and the requirements of this article and that the mattress recycling organization can
111 reasonably provide.
- 112 D. The Department shall review the plan proposed by the mattress recycling organization. The
113 Department shall approve the plan proposed by the mattress recycling organization if it determines that the
114 plan, including the proposed budget and proposed mattress recycling fee, complies with the requirements of
115 this article. The Department shall reevaluate the approved plan five years following the approval.
- 116 E. The mattress recycling organization that submits a proposed plan for approval shall pay to the
117 Department (i) a plan review fee that reimburses the Department's actual cost of plan review and (ii) an
118 annual fee that reimburses the Department for its actual costs associated with Program compliance
119 oversight, including the Department's review of the mattress recycling organization's annual report.
- 120 F. Following the Department's approval of the plan, including the budget and mattress recycling fee:
- 121 1. The mattress recycling organization shall implement its plan within one year after approval of such
122 plan.
- 123 2. At least 90 days before the date on which Program implementation will commence, the mattress
124 recycling organization shall notify all producers, retailers, and renovators of that implementation date and
125 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 mattress recycling organization'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. A retailer shall provide such educational materials to consumers at the point of sale.

G. No mattress collection site that participates in the Program shall charge any additional fee for accepting a discarded mattress from consumers for recycling unless otherwise specified by contract.

H. 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 state or federal 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.

§ 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 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;

6. 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;

7. An evaluation of why unrecycled mattresses were not recycled;

8. Recommendations for any changes to the Program, including information relevant to compliance with the plan; and

9. 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

188 *Department shall approve the annual report. The mattress recycling organization shall post the approved*
189 *annual report on the organization's website. If the Department determines that the annual report does not*
190 *comply with the requirements of subsection A or that the revenue earned from the mattress recycling fee*
191 *exceeds the costs of the Program, the mattress recycling organization shall submit to the Department a plan*
192 *on how the organization shall address the noncompliance in the upcoming year.*

193 *C. Financial, production, or sales data reported to the Department by a producer, retailer, mattress*
194 *recycling organization, or recycler shall be kept confidential by the Department, not be subject to public*
195 *inspection, and be exempt from disclosure pursuant to the Virginia Freedom of Information Act (§ 2.2-3700*
196 *et seq.). The Department may release summary data that does not disclose financial, production, or sales*
197 *data of a producer, retailer, or mattress recycling organization.*

198 **§ 10.1-1425.43. Powers and duties of the Department; regulations.**

199 *A. The Department shall require renovators, localities, and other relevant entities to report to the*
200 *Department any information that the mattress recycling organization will need to prepare its annual report*
201 *and will provide aggregated data to the organization for this purpose.*

202 *B. The Board shall make, adopt, and promulgate such regulations as may be necessary to carry out the*
203 *provisions of this article and the Department shall enforce any such regulations.*