

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.

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

28 "Mattress" means a resilient material or combination of materials that is enclosed by a ticking, is
29 used alone or in combination with other products, and is intended for or promoted for sleeping on.

30 "Mattress" includes a foundation. "Mattress" does not include:

31 1. An unattached mattress pad or topper that is designed to be used on top of or in addition to a
32 mattress;

33 2. A waterbed, air mattress, or any other product that contains liquid-filled or gas-filled ticking
34 and that does not contain upholstery material between the ticking and the mattress core;

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

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

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

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

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

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

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

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

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

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

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

64 "Renovate" means to alter a discarded mattress for resale in compliance with any regulations
65 promulgated pursuant to § 32.1-12 by the Board of Health through replacing the ticking or filling, adding
66 additional filling, or replacing components of the discarded mattress with new or recycled materials.

67 "Renovate" does not include (i) stripping a discarded mattress of the ticking or filling without adding new
68 material or (ii) the sanitization or sterilization of a discarded mattress without other alteration to the
69 discarded mattress.

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

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

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

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

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

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

87 **§ 10.1-1425.41. Mattress stewardship program.**

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

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

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

104 D. On or before July 1, 2026, the certified mattress recycling organization shall submit to the
105 Department for approval a plan for the establishment of a mattress stewardship program. Such plan shall:
106 1. Identify the producers, brands, retailers, and renovators registered with the organization;
107 2. Describe how the organization will collect, transport, and recycle discarded mattresses,
108 including contracting with third parties to provide some or all of those services, and the approximate time
109 following implementation of the program required to implement various aspects of the approved program;
110 3. Propose a uniform per unit mattress recycling fee that is sufficient to cover all costs of
111 establishing and administering the program, including a financial reserve sufficient to operate the program
112 over a multiyear period of time in a fiscally prudent and responsible manner, and describe how the retailer
113 will collect such fee from the consumer and remit such fees to the organization;
114 4. Describe sound management practices that the organization will communicate to third parties
115 under contract with the organization that the third parties may use to protect worker health and safety;
116 5. Describe the criteria entities under contract with the organization will apply in determining
117 whether a mattress should be rejected as unacceptable for recycling because it is contaminated, wet,
118 crushed, or would otherwise pose a health or safety risk to personnel or equipment, and how the solid
119 waste sector would like to dispose of such mattresses;
120 6. Describe how the stewardship organization will (i) work with existing recyclers and mattress
121 collection infrastructure; (ii) consult with state and local governments and other stakeholders; and (iii)
122 conduct research as necessary to improve the collection and recycling of mattresses, including research to
123 identify new markets and uses for recycled material;
124 7. Describe how the organization will solicit, recruit, and compensate mattress waste management
125 entities including (i) existing municipal, private, and nonprofit entities in the Commonwealth that
126 transport, handle, or recycle discarded mattresses; (ii) minority-owned, woman-owned, and veteran-
127 owned business enterprises; and (iii) businesses that prioritize the training and hiring of individuals who
128 are reentering society after imprisonment, experiencing homelessness and housing insecurity, in addiction
129 recovery, disabled, or are otherwise socioeconomically or historically marginalized or disadvantaged;

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

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

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

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

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

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

156 Department collects from renovators operating in the Commonwealth, the percentage of discarded
157 mattresses that are renovated; and

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

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

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

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

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

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

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

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

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

189 3. Upon plan implementation:

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

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

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

207 K. 1. In the first 12 months during which the mattress recycling fee is collected, the mattress
208 recycling organization may change the amount of the mattress recycling fee and shall provide no less than
209 90 days' notice to the public before any change in the amount of such fee takes place.

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

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

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

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

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

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

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

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

239 **§ 10.1-1425.42. Annual reporting requirements.**

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

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

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

249 3. The quantity of each category of materials recycled and the quantity of otherwise disposed of
250 materials;

251 4. The uses for the recycled materials;

252 5. The number of illegally dumped mattresses, based on data the Department collects from
253 localities in the Commonwealth;

254 6. The audit report of the mattress recycling organization's accounting books conducted at the
255 organization's expense by an independent certified public accountant retained by the organization;

256 7. Samples of educational materials used to inform consumers about mattress recycling, a summary
257 of public education efforts, and an evaluation of the effectiveness of such educational materials and public
258 education efforts;

259 8. An evaluation of why unrecycled mattresses were not recycled;

260 9. The total number of mattresses sold to consumers in the Commonwealth in the previous calendar
261 year, based on data that the mattress recycling organization collects in connection with the mattress
262 recycling fee remittance process;

263 10. Strategies to address discarded mattresses that were not included in such program and that
264 were illegally dumped;

265 11. Reports on research activities and pilot programs conducted or funded by the mattress recycling
266 organization;

267 12. An analysis of how the data required by this subsection has changed over time;

268 13. An evaluation of the effectiveness of methods and processes used to achieve the goals of such
269 program, including information on progress made toward achieving such goals, an explanation of why
270 any goals were not met during the previous calendar year, and information on any efforts that will be taken
271 to improve progress toward meeting such goals in the future, if applicable;

272 14. Recommendations for any changes to such program, including information relevant to
273 compliance with the plan; and

274 15. Other information requested by the Department that is reasonably related to compliance with
275 the recycling plan and the requirements of this article and that the organization can reasonably provide.

276 B. The Department shall review the annual report and (i) evaluate the total revenues and expenses
277 of the mattress stewardship program to determine whether the revenue earned from the mattress recycling
278 fee meets or exceeds the costs of the program, including a financial reserve sufficient to operate the
279 program over a multiyear period of time in a fiscally prudent and responsible manner, and (ii) determine
280 whether the program is being implemented in accordance with the organization's approved plan. If the
281 Department determines that the annual report complies with the requirements of subsection A and that the
282 revenue earned from the mattress recycling fee does not exceed the costs of the program, the Department
283 shall approve the annual report. The mattress recycling organization shall post the approved annual report
284 on the organization's website. If the Department determines that the annual report does not comply with
285 the requirements of subsection A or that the revenue earned from the mattress recycling fee exceeds the

286 costs of the program, the mattress recycling organization shall submit to the Department a plan on how
287 the organization will address the noncompliance in the upcoming year.

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

292 **§ 10.1-1425.43. Mattress Stewardship Program Advisory Board established; membership;**
293 **duties and responsibilities; meetings; annual report.**

294 A. There is hereby established the Mattress Stewardship Program Advisory Board, referred to in
295 this section as "the Advisory Board," for the purpose of advising the Department on the proper
296 implementation and sustainability of the mattress stewardship program. The Department shall provide
297 organizational staff support for the Advisory Board.

298 B. The Advisory Board shall have a total membership of nine members. Members of the Advisory
299 Board shall be appointed as follows: the Director of the Department of Environmental Quality, or the
300 Director's designee; the State Health Commissioner, or the Commissioner's designee; the Secretary of
301 Commerce and Trade, or the Secretary's designee; and six members appointed by the Governor to include
302 one representative of mattress retailers; one representative of the mattress manufacturing industry; one
303 mattress recycler; one representative of an environmental advocacy group; one representative of the
304 Virginia Association of Counties; and one consumer representative. Members of the Advisory Board shall
305 be citizens of the Commonwealth.

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

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

311 1. Review and evaluate the structure, financing, and other aspects of the mattress stewardship
312 program;

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

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

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

321 5. Review and comment on draft regulations relevant to the implementation of the mattress
322 stewardship program.

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

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

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

332 **§ 10.1-1425.44. Powers and duties of the Department.**

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

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

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

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

342 **§ 10.1-1425.45. Civil penalties for violations of the mattress stewardship program.**

343 A. Any retailer that violates the provisions of this article is subject to a civil penalty not to exceed
344 \$100 per day for each day of violation.

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

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