

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Susan L. Moran

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act establishing safe paint stewardship.

PETITION OF:

NAME:

Susan L. Moran

DISTRICT/ADDRESS:

Plymouth and Barnstable

SENATE No.

[Pin Slip]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

An Act establishing safe paint stewardship.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 21H of the General Laws is hereby amended by adding the
2 following section:-

3 Section 9. (a) As used in this section, the following words shall have the following
4 meanings unless the context clearly requires otherwise:

5 “Architectural paint”, interior and exterior architectural coatings sold in containers of 5
6 gallons or less; provided, however, that “architectural paint” shall not include industrial, original
7 equipment or specialty coatings.

8 “Collection site”, any location, service or event at which architectural paint is accepted
9 into a postconsumer paint collection program pursuant to a postconsumer paint collection
10 program plan.

11 “Commissioner”, the commissioner of environmental protection.

12 “Department”, the department of environmental protection.

13 “Environmentally sound management practices”, procedures for the collection, storage,
14 transportation, reuse, recycling, and disposal of architectural paint, to be implemented by the
15 manufacturer or representative organization or by the manufacturers or representative
16 organization’s contracted partners to comply with all applicable federal, state and local laws and
17 any regulations and ordinances for the protection of human health and the environment. These
18 procedures shall address adequate record keeping, tracking and documenting of the final
19 disposition of materials and appropriate environmental liability coverage for the representative
20 organization.

21 “Household waste”, household waste as defined in 40 CFR § 261.4(b)(1).

22 “Postconsumer paint”, architectural paint not used and no longer wanted by a purchaser.

23 “Manufacturer”, manufacturer of architectural paint who sells, offers for sale or
24 distributes the architectural paint in the State under the manufacturer’s own name or brand.

25 “Program”, the postconsumer paint stewardship program established pursuant to section
26 (b).

27 “Recycling”, a process by which discarded products, components and by-products are
28 transformed into new usable or marketable materials in a manner in which the original products
29 may lose their identity.

30 “Representative organization”, a nonprofit organization established by a manufacturer to
31 implement the postconsumer paint stewardship program.

32 “Retailer”, a company that offers architectural paint or other allied products for retail sale
33 in the commonwealth.

34 “Very small quantity generator”, very small quantity generators as defined in 40 CFR §
35 260.10.

36 (b)(1) A manufacturer of architectural paint sold at retail in the commonwealth or a
37 representative organization shall submit to the commissioner a plan for the establishment of a
38 postconsumer paint stewardship program. The program will seek to reduce the generation of
39 postconsumer paint, promote its reuse and recycling, and manage this waste stream using
40 environmentally sound management practices.

41 (2) The plan submitted by the manufacturer or representative organization to the
42 department under this section shall:

43 (i) Provide a list of participating manufacturers and brands covered by the program.

44 (ii) Provide information on the architectural paint products covered under the program,
45 such as interior or exterior water- and oil-based coatings, primers, sealers, or wood coatings.

46 (iii) Describe how it will provide for convenient and cost-effective statewide collection of
47 postconsumer architectural paint in the commonwealth. The manufacturer or representative
48 organization may coordinate the program with existing household hazardous waste collection
49 infrastructure as is mutually agreeable. A paint retailer may be authorized by the manufacturer
50 or representative organization as a paint collection site if the paint retailer volunteers to act as
51 such, complies with all applicable laws and regulations, and the retail location is consistent with
52 the maintenance of a cost-effective network of paint collection locations.

53 (iv) Establish a goal for the number and geographic distribution of collection sites for
54 postconsumer architectural paint, using geographic modeling and the following criteria: (A) at

55 least 90 percent of Massachusetts residents shall have a collection site within a 15-mile radius;
56 and (B) one site will be available for every 50,000 residents, unless otherwise approved by the
57 commissioner.

58 (v) Describe how postconsumer paint will be managed in an environmentally and
59 economically sound manner using the following strategies, in this order: reuse, recycling, energy
60 recovery, and disposal.

61 (vi) Describe education and outreach efforts to inform consumers about the program.
62 These materials should include (A) information about collection opportunities for postconsumer
63 paint; (B) information about the fee for the operation of the program that shall be included in the
64 purchase price of all architectural paint sold in the commonwealth; and (C) efforts to promote the
65 source reduction, reuse, and recycling of architectural paint.

66 (vii) Be reviewed by an independent auditor to assure that any added fee to paint sold in
67 the commonwealth as a result of the postconsumer paint stewardship program does not exceed
68 the costs to operate and sustain the program in accordance with sound management practices.
69 The independent auditor shall verify that the amount added to each unit of paint will cover the
70 aforementioned costs of the postconsumer paint stewardship program.

71 (3) The representative organization shall select the independent auditor in consultation
72 with the department. The department shall review the work product of the independent auditor.
73 The cost of any work performed by such independent auditor shall be funded by the program.

74 (4) Not later than 60 days after submission of the plan under this section, the
75 commissioner shall make a determination in writing, whether to approve the plan as submitted or
76 disapprove the plan.

77 (5) The department shall enforce the plan and may, by regulation, establish enforcement
78 procedures including the circumstances under which a new plan or an amendment to the plan
79 must be filed by the manufacturer or representative organization.

80 (6) No later than the implementation date of the program, information regarding the
81 approved plan, the names of participating producers, and the brands of architectural paint
82 covered by the program shall be posted on the department's website and on the website of the
83 representative organization.

84 (7) Upon implementation of the program, each manufacturer shall include in the price of
85 any architectural paint sold to retailers and distributors in the commonwealth the per container
86 amount in the approved program plan. A retailer or distributor shall not deduct this amount from
87 the purchase price.

88 (c)(1) A manufacturer or retailer shall not sell, or offer for sale, architectural paint to any
89 person in the commonwealth unless the manufacturer of a paint brand or manufacturer's
90 representative organization is implementing an approved paint stewardship plan as required by
91 section (b).

92 (2) A retailer shall be in compliance with this section if, on the date the architectural paint
93 was offered for sale, the manufacturer is listed on the department's website as implementing or
94 participating in an approved program or if the paint brand is listed on the department's website as
95 being included in the program.

96 (3) A paint collection site authorized under the provisions of this section shall not charge
97 any additional amount for the disposal of paint when it is offered for disposal.

98 (4) A manufacturer or the representative organization participating in a postconsumer
99 paint stewardship program shall not be liable for any claim of a violation of antitrust, restraint of
100 trade, unfair trade practice, or other anticompetitive conduct arising from conduct undertaken in
101 accordance with the program.

102 (5) On an annual schedule to be determined in the program plan, the manufacturer or
103 representative organization shall submit a report to the commissioner that details the program.
104 The department may extend the time for submission of the annual report for cause shown. The
105 annual report shall include: (i) a description of the methods used to collect and transport
106 postconsumer paint collected in the State; (ii) the volume and type of postconsumer paint
107 collected, and a description of the methods used to process the paint, including reuse, recycling
108 and other methods; (iii) samples of educational materials provided to consumers of architectural
109 paint; and (iv) the total cost of the program and an independent financial audit. An independent
110 financial auditor shall be chosen by the producer or representative organization. The report or
111 information relating to the report shall be posted on the department's website and on the website
112 of the representative organization.

113 (6) Financial, production or sales data reported to the department by a manufacturer or by
114 the representative organization shall not be subject to disclosure but the commissioner may
115 release a summary form of such data that does not disclose financial, production or sales data of
116 the manufacturer, retailer or representative organization.

117 (d)(1) Generators of household wastes and very small quantity generators are authorized
118 to transport or send their architectural paints to a paint collection site to the extent permitted by a
119 postconsumer paint stewardship program approved by the commissioner.

120 (2) Notwithstanding any general or special law to the contrary, paint collection sites are
121 authorized to collect and temporarily store architectural paints generated by persons specified in
122 this section in accordance with the requirements of the paint stewardship program in lieu of any
123 otherwise applicable law, rule or regulation.

124 (3) Nothing in this section shall be construed as restricting the collection of architectural
125 paint by a postconsumer paint stewardship program where such collection is authorized under
126 any other laws or regulations.

127 (4) Nothing in this section shall be construed to affect any requirements applicable to
128 facilities that treat, dispose, or recycle architectural paint under an otherwise application law, rule
129 or regulation.

130 SECTION 2. The plan required by subsection (b) of section 9 of chapter 21H of the
131 General Laws shall be submitted not later than 12 months after the effective date of this act. The
132 manufacturer or representative organization shall implement the plan within 6 months of the date
133 that the program plan is approved by the commissioner. The department may extend the date of
134 the plan submission or the date of the implementation of the program for good cause shown.

135 SECTION 3. The manufacturer or representative organization shall submit the first
136 annual report detailing the postconsumer paint collection program as required by paragraph (5)
137 of subsection (c) of section 9 of chapter 21H of the General Laws to the commissioner of
138 environmental protection not later than September 1, 2023 and annually thereafter. The
139 department may extend the time for submission of the annual report for cause shown.