

SENATE No. 2222

The Commonwealth of Massachusetts

PRESENTED BY:

Richard T. Moore

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 the Massachusetts paint stewardship program.

PETITION OF:

NAME:

DISTRICT/ADDRESS:

Richard T. Moore

Worcester and Norfolk

John V. Fernandes

10th Worcester

SENATE No. 2222

By Mr. Richard T. Moore, a petition (accompanied by bill, Senate, No. 2222) of Richard T. Moore and John V. Fernandes for legislation to establish the Massachusetts paint stewardship program. Revenue.

The Commonwealth of Massachusetts

In the Year Two Thousand Fourteen

An Act establishing the Massachusetts paint stewardship program.

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 inserting the
2 following section:

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

5 "Architectural paint" means interior and exterior architectural coatings sold in containers
6 of five gallons or less and does not mean industrial, original equipment, or specialty coatings.

7 "Commissioner" means the Commissioner of the Department of Environmental
8 Protection.

9 "Department" means the Department of Environmental Protection.

10 "Distributor" means a company that has a contractual relationship with one or more
11 producers to market and sell architectural paint to retailers in the state.

12 "Environmentally sound management practices" means procedures for the collection,
13 storage, transportation, reuse recycling and disposal of architectural paint, to be implemented by
14 the producer, stewardship organization or their contracted partners to ensure compliance with all
15 applicable federal, state and local laws, regulations and ordinances and protection of human
16 health and the environment. Such procedures shall address adequate record keeping, tracking
17 and documenting the fate of materials within the state and beyond, and adequate environmental
18 liability coverage for professional services and for the operations of the contractors working on
19 behalf of the producer organization.

20 “Energy recovery” means recovery in which all or a part of the solid waste materials are
21 processed in order to use the heat content or other forms of energy of or from the material.

22 “Paint stewardship assessment” means the amount added to the purchase price of
23 architectural paint sold in the state necessary to cover the paint stewardship program’s cost of
24 collecting, transporting, and processing the postconsumer paint statewide.

25 “Postconsumer paint” means architectural paint not used and no longer wanted by a
26 purchaser.

27 “Producer” means a manufacturer of architectural paint who sells, offers for sale, or
28 distributes that paint in the state under the producer’s own name or brand.

29 “Recycling” means any process by which discarded products, components, and by-
30 products are transformed into new usable or marketable materials in a manner in which the
31 original products may lose their identity but does not include energy recovery or energy
32 generation by means of combusting discarded products, components, and by-products with or
33 without other waste products.

34 “Retailer” means any person that offers architectural paint for sale at retail in the state.

35 “Reuse” means the return of a product into the economic stream for use in the same kind
36 of application as originally intended, without a change in the product’s identity.

37 “Representative organization” means the nonprofit organization created by producers to
38 implement the paint stewardship program described in paragraph (b).

39 “Sell” or “sale” means any transfer of title for consideration, including remote sales
40 conducted through sales outlets, catalogues, or the Internet or any other similar electronic means.

41 (b)(1) On or before April 1, 2015, producers of architectural paint sold at retail in this
42 state or a representative organization shall submit a plan for the establishment of a paint
43 stewardship program to the Commissioner for approval. The plan must minimize public sector
44 involvement in the management of postconsumer paint by reducing its generation, promoting its
45 reuse and recycling, and negotiating and executing agreements to collect, transport, reuse,
46 recycle, burn for energy recovery, and dispose of postconsumer paint using environmentally
47 sound management practices.

48 (2) The plan must provide for convenient and available statewide collection of post-
49 consumer architectural paint that at a minimum provides for collection rates and convenience
50 equal to or greater than the collection programs available to consumers prior to the paint
51 stewardship program; and addresses the coordination of the architectural paint stewardship
52 program with existing Household Hazardous Waste collection infrastructure as much as is
53 reasonably feasible and mutually agreeable. In order to determine whether or not convenient and

54 available statewide collection of post-consumer architectural paint exists, the plan shall
55 demonstrate that at least 90% of residents have a collection site within a 15-mile radius, and that
56 at least one collection site is established in each municipality with a population of 30,000 or
57 more, unless otherwise approved by the Department. Other than the paint stewardship
58 assessment described in paragraph (3), no fee shall be charged to an individual who disposes of
59 paint at a collection site in accordance with the provisions of this section.

60 (3) The plan must identify each producer participating in the program and the brands of
61 architectural paint sold in the state covered by the program. The Department shall list these
62 producers and the brands implementing or participating in an approved paint stewardship
63 program on its website.

64 (4) The plan shall:

65 (i) identify, in detail, the educational and outreach program that will be implemented to
66 inform consumers and retailers of the program and how to participate;

67 (ii) identify the methods and procedures under which the paint stewardship program will
68 be coordinated with department;

69 (iii) identify, in detail, the operational plans for interacting with retailers on the proper
70 handling and management of post-consumer paint;

71 (iv) include the targeted annual collection rate; and

72 (v) include a description of the intended treatment, storage, transportation and disposal
73 options and methods for the collected post-consumer paint.

74 (5) The representative organization shall update the plan and the provisions of the plan
75 enumerated under paragraphs (b)(2) through (b)(4), as needed, when there are changes proposed
76 to the current program. A new plan or amendment will be required to be submitted to the
77 department for approval when:

78 (i) there is a change to the amount of the assessment; or

79 (ii) there is a revision of the product stewardship organization's goals; or

80 (iii) every four (4) years, if requested, in writing, by the department.

81 The representative organization shall notify the department annually, in writing, if there
82 are no changes proposed to the program and the representative organization intends to continue
83 implementation of the program as previously approved by the department.

84 (6) The department shall have the power to enforce the provisions of the plan and may,
85 by regulation, establish enforcement procedures.

86 (c)(1) A paint stewardship assessment, as established pursuant to subdivision (3) of this
87 subsection, shall be added to the cost of all architectural paint sold to retailers and distributors in
88 this state. Each such retailer or distributor shall add such assessment to the purchase price of all
89 architectural paint sold in this state.

90 (2) Such paint stewardship program shall include a funding mechanism for the
91 representative organization whereby each architectural paint producer participating in the
92 organization shall remit to the representative organization payment of the paint stewardship
93 assessment for each container of architectural paint it sells in this state.

94 (3) The representative organization shall establish a uniform paint stewardship
95 assessment for all architectural paint sold in this state. The amount of such paint stewardship
96 assessment shall be approved by the Department.

97 (4) The paint stewardship assessment shall be reviewed by an independent auditor to
98 assure that such assessment does not exceed the costs of the paint stewardship program and such
99 independent auditor shall recommend an amount for such paint stewardship assessment to the
100 department. The department shall be responsible for the approval of such paint stewardship
101 assessment. Such independent auditor may be selected by the department and the department
102 shall be responsible for the review of the work product of such independent auditor, including,
103 but not limited to, the review of such auditor's assessment of the bid and purchase procedures
104 utilized by the representative organization to implement such program. The department may
105 terminate the services of any such independent auditor. Not less than once every five years, the
106 department may select a different independent auditor to perform the duties described in this
107 section. The cost of any work performed by such independent auditor shall be funded by the
108 paint stewardship assessment.

109 (d)(1) Beginning no later than July 1, 2015, or three months after the plan is approved
110 under subsection (b)(1) of this section, whichever occurs later, the stewardship organization must
111 begin implementing the plan.

112 (2) A producer or retailer may not sell or offer for sale architectural paint to any person in
113 the state unless the producer of a paint brand or a stewardship program of which the producer is a
114 member is implementing an approved paint stewardship program plan as required by paragraph
115 (b).

116 (3) Paint manufacturers or the representative organization described in this section shall
117 provide consumers with educational materials regarding the paint stewardship assessment and
118 paint stewardship program. Such materials shall include, but not be limited to, information
119 regarding available end-of-life management options for architectural paint offered through the
120 paint stewardship program and information that notifies consumers that a charge for the
121 operation of such paint stewardship program is included in the purchase price of all architectural
122 paint sold in this state.

123 (4) A retailer complies with the requirements of this section if, on the date the
124 architectural paint was ordered from the producer or its agent, the producer or the paint brand is
125 listed on the Department's website as implementing or participating in an approved paint
126 stewardship program. Paint retailers and municipalities may participate as paint collection points
127 pursuant to such paint stewardship program on a voluntary basis and pursuant to all applicable
128 laws and regulations.

129 (5) Any manufacturer or the representative organization that organizes the collection,
130 transport and processing of postconsumer paint, in accordance with the paint stewardship
131 program described in this section, shall be immune from liability for any claim of a violation of
132 antitrust, restraint of trade or unfair trade practice arising from conduct undertaken in accordance
133 with the paint stewardship program described in this section.

134 (6) On or before October 15, 2015 and annually thereafter, the producer or representative
135 organization shall submit a report to the Commissioner that details such paint stewardship
136 program. Such report shall include, but not be limited to: (i) A description of the methods used to
137 collect, transport, and process postconsumer paint in this state; (ii) the volume of postconsumer
138 paint collected in this state; (iii) the volume and type of postconsumer paint collected in this state
139 by method of disposition, including reuse, recycling and other methods of processing; (iv) the
140 total cost of implementing such program, as determined by an independent financial audit funded
141 from the paint stewardship assessment; and (v) samples of educational materials provided to
142 consumers of architectural paint.

143 (7) Financial, production, or sales data reported to the department by a producer or the
144 representative organization shall not be subject to disclosure provided that the Commissioner
145 may release a summary form of such data that does not disclose financial, production or sales
146 data of the producer, retailer or representative organization.

147 SECTION 2. This act shall take effect upon its passage.