

SENATE No. 2109

Senate, January 21, 2016 -- Text of the Senate Bill establishing the paint stewardship program
(Senate, No. 2109) (being the text of Senate, No. 2052, printed as amended)

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act establishing the 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 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 “Commissioner”, the commissioner of environmental protection.

9 “Department”, the department of environmental protection.

10 “Distributor”, a company that has a contractual relationship with a producer to market
11 and sell architectural paint to retailers in the commonwealth.

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

14 “Environmentally sound management practices”, procedures for the collection, storage,
15 transportation, reuse, recycling and disposal of architectural paint, to be implemented by the
16 producer or representative organization or by the producer’s or representative organization’s
17 contracted partners to ensure compliance with all applicable federal, state and local laws and any
18 regulations and ordinances for the protection of human health and the environment; provided,
19 however, that such procedures shall address adequate record keeping, tracking and documenting
20 of the final disposition of materials and adequate environmental liability coverage for
21 professional services and for the operations of the contractors working on behalf of the producer
22 or representative organization

23 “Paint stewardship assessment”, the amount added to the purchase price of architectural
24 paint sold in the commonwealth which is necessary to cover the paint stewardship program’s
25 cost of collecting, transporting and processing the postconsumer paint throughout the
26 commonwealth.

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

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

30 “Program”, the paint stewardship program established pursuant to subsection (b).

31 “Recycling”, a process by which discarded products, components and by-products are
32 transformed into new usable or marketable materials in a manner in which the original products

33 may lose their identity; provided, however, that “recycling” shall not include energy recovery or
34 energy generation by means of combusting discarded products, components and by-products
35 with or without other waste products.

36 “Representative organization”, a nonprofit organization established by a producer to
37 implement the paint stewardship program.

38 “Retailer”, a person that offers architectural paint for sale at retail in the commonwealth.

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

41 “Sale”, a transfer of title for consideration, including remote sales conducted through
42 sales outlets, catalogs or the Internet or any other similar electronic means.

43 (b) (1) A producer of architectural paint sold at retail in the commonwealth or a
44 representative organization shall submit to the commissioner for the commissioner’s approval a
45 plan for the establishment of a paint stewardship program. The program shall: (i) minimize
46 public sector involvement in the management of postconsumer paint by reducing its generation,
47 promoting its reuse and recycling and negotiating and executing agreements to collect, transport,
48 reuse, recycle, burn for energy recovery and dispose of postconsumer paint using
49 environmentally sound management practices; (ii) provide for convenient and available
50 statewide collection of postconsumer architectural paint that at a minimum provides for
51 collection rates and convenience equal to or greater than the collection programs available to
52 consumers prior to the establishment of the program; (iii) address the coordination of the
53 program with existing household hazardous waste collection infrastructure as is feasible and
54 mutually agreeable; (iv) demonstrate that at least 90 per cent of residents shall have a collection

55 site within a 15-mile radius and at least 1 collection site shall be established in each municipality
56 with a population of 50,000 or more unless otherwise approved by the department; and (v)
57 ensure regional equity in the convenience and availability of statewide collection sites. Other
58 than the paint stewardship assessment pursuant to subsection (c), no fee shall be charged to an
59 individual who disposes of paint at a collection site in accordance with this section.

60 (2) The plan submitted to the department under this section shall:

61 (i) identify, in detail, the educational and outreach programs to be
62 implemented to inform consumers and retailers of the program and how to participate;

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

65 (iii) include a timeframe for complying with clauses (iv) and (v) of
66 paragraph (1);

67 (iv) identify, in detail, the operational plans for interacting with retailers
68 on the proper handling and management of postconsumer paint;

69 (v) include the targeted annual collection rate;

70 (vi) include a description of the intended treatment, storage, transportation
71 and disposal options and methods for the collected postconsumer paint;

72 (vii) identify each producer participating in the program and the brands of
73 architectural paint sold in the state covered by the program;

74 (viii) propose an audited paint stewardship assessment as required by
75 subsection (c); and

76 (ix) include a funding mechanism that requires each producer who
77 participates in a representative organization to remit to the representative organization payment
78 of the paint stewardship assessment for each container of architectural paint sold in the
79 commonwealth.

80 (3) A new plan or amendment shall be submitted to the department for approval:

81 (i) if there is a change to the amount of the assessment;

82 (ii) if there is a revision of the producer's or representative organization's
83 goals; or

84 (iii) if requested in writing by the department.

85 (4) Not later than 60 days after submission of the plan under this section, the
86 commissioner shall make a determination, in writing, whether to (i) approve the plan as
87 submitted; (ii) approve the plan with conditions; or (iii) disapprove the plan.

88 (5) The department shall enforce the plan and may, by regulation, establish
89 enforcement procedures.

90 (6) Not later than the implementation date of the program, the approved plan, the
91 names of participating producers, the brands of architectural paint covered by the program and
92 the amount of the paint stewardship assessment shall be posted on the department's website and
93 on the website of the representative organization.

94 (c) (1) Upon implementation of the program, the paint stewardship assessment shall
95 be added to the cost of any architectural paint sold to retailers and distributors in the
96 commonwealth. A retailer or distributor shall add the paint stewardship assessment to the
97 purchase price of all architectural paint sold in the commonwealth.

98 (2) The paint stewardship assessment shall be reviewed by an independent
99 auditor to assure that the assessment does not exceed the costs of the program and the
100 independent auditor shall recommend an amount for the paint stewardship assessment to be
101 included in the plan submitted to the department under subsection (b). If the paint stewardship
102 assessment previously approved by the department under this section is proposed to be changed,
103 the representative organization shall submit the new, adjusted paint stewardship assessment to an
104 independent auditor for review. After the auditor's review has been completed, the
105 representative organization shall submit the results of the audit and a proposal to amend the paint
106 stewardship assessment to the department for review. The department shall review and approve,
107 in writing, the adjusted paint stewardship assessment before the new assessment can be
108 implemented; provided, however, that the department shall submit to the clerks of the house and
109 senate and to the senate and house committees on ways and means the amount of the paint
110 stewardship assessment not fewer than 30 days before the paint stewardship assessment goes into
111 effect.

112 The independent auditor may be selected by the department and the department shall
113 review the work product of the independent auditor including, but not limited to, reviewing the
114 auditor's assessment of the bid and purchase procedures utilized by the representative
115 organization to implement the program. The department may terminate the services of any such
116 independent auditor. Not less frequently than every 5 years, the department shall select a

117 different independent auditor to perform the duties described in this section. The cost of any
118 work performed by such independent auditor shall be funded by the paint stewardship
119 assessment.

120 (d) (1) A producer or retailer shall not sell, or offer for sale, architectural paint to any
121 person in the commonwealth unless the producer of a paint brand or a stewardship program of
122 which the producer is a member is implementing an approved paint stewardship program plan as
123 required by subsection (b).

124 (2) Producers or the representative organization shall provide consumers with
125 educational materials regarding the program and the paint stewardship assessment. The materials
126 shall include, but not be limited to, information regarding available end-of-life management
127 options for architectural paint offered through the program and information that notifies
128 consumers that a charge for the operation of the program is included in the purchase price of all
129 architectural paint sold in the commonwealth. Producers or the representative organization shall
130 provide retailers with the educational materials, including materials detailing the total amount of
131 the paint stewardship assessment. Retailers shall conspicuously make the educational materials,
132 which shall include the per unit amount of said assessment, available for consumers at the point
133 of purchase or at the display of architectural paint.

134 (3) A retailer shall be in compliance with this section if, on the date the
135 architectural paint was ordered from the producer or the producer's agent, the producer is listed
136 on the department's website as implementing or participating in an approved program or if the
137 paint brand is listed on the department's website as being included in the program.
138 Municipalities and paint retailers may participate as paint collection points pursuant to the

139 program on a voluntary basis, subject to all applicable laws and regulations but no retailer shall
140 be required by a producer to participate as a collection point as a condition of the retailer's
141 business relationship with the producer.

142 (4) A manufacturer or the representative organization that organizes the
143 collection, transport and processing of postconsumer paint, in accordance with the paint
144 stewardship program, shall not be liable for any claim of a violation of antitrust, restraint of trade
145 or unfair trade practice arising from conduct undertaken in accordance with the program
146 pursuant to this section.

147 (5) Annually, the producer or representative organization shall submit a report to
148 the commissioner that details the program. The report shall include, but not be limited to: (i) a
149 description of the methods used to collect, transport and process postconsumer paint in the
150 commonwealth; (ii) the volume of postconsumer paint collected; (iii) the volume and type of
151 postconsumer paint collected, by method of disposition, including reuse, recycling and other
152 methods of processing; (iv) the total cost of implementing the program, as determined by an
153 independent financial audit funded by the paint stewardship assessment; and (v) samples of
154 educational materials provided to consumers of architectural paint. The report shall be posted on
155 the department's website and on the website of the representative organization.

156 (6) Financial, production or sales data reported to the department by a producer or
157 by the representative organization shall not be subject to disclosure but the commissioner may
158 release a summary form of such data that does not disclose financial, production or sales data of
159 the producer, retailer or representative organization.

160 SECTION 2. The plan required by subsection (b) of section 9 of chapter 21H of the
161 General Laws shall be submitted not later than July 1, 2017.

162 SECTION 3. The producer or representative organization shall submit the first annual
163 report detailing the paint stewardship program as required by paragraph (5) of subsection (d) of
164 section 9 of chapter 21H of the General Laws to the commissioner of environmental protection
165 not later than October 15, 2018.

166 SECTION 4. Beginning not later than October 1, 2017 or 3 months after the plan is
167 approved under subsection (b) of section 9 of chapter 21H of the General Laws, whichever
168 occurs later, the producer or representative organization shall implement the paint stewardship
169 program.