

FIRST REGULAR SESSION

SENATE BILL NO. 639

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR BERNSKOETTER.

2542S.01H

KRISTINA MARTIN, Secretary

AN ACT

To amend chapter 701, RSMo, by adding thereto one new section relating to paint recycling.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 701, RSMo, is amended by adding thereto
2 one new section, to be known as section 701.151, to read as
3 follows:

701.151. 1. As used in this section, the following
2 terms mean:

(1) "Administrative fee", a fee set by the department
3 to reimburse the department for administering this section
4 and paid by each producer or representative organization
5 submitting a plan under this section;

(2) "Architectural paint", interior and exterior
7 architectural coatings sold in containers of five gallons or
8 less. "Architectural paint" shall not be construed to
9 include industrial, original equipment, or specialty
10 coatings;

(3) "Collection site", any location, event, or other
12 department-approved collection service at which
13 architectural paint is accepted into a post-consumer paint
14 collection program under a post-consumer paint collection
15 program plan;

(4) "Conditionally exempt small quantity generator",
17 the same definition as in 10 CSR 25-4.261(2) (A) and is
18 equivalent to "very small quantity generator";
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20 (5) "Department", the department of natural resources;

21 (6) "Director", the director of the department of
22 natural resources or the director's designee;

23 (7) "Environmentally sound management practices",
24 procedures for the collection, storage, transportation,
25 reuse, recycling, and disposal of architectural paint that
26 shall:

27 (a) Be implemented by producers or a representative
28 organization or by contracted partners of the producers or a
29 representative organization to ensure compliance with all
30 applicable federal, state, and local laws and any
31 regulations and ordinances for the protection of human
32 health and the environment;

33 (b) Address adequate record keeping, tracking, and
34 documenting of the final disposition of materials; and

35 (c) Address appropriate environmental liability
36 coverage for the representative organization;

37 (8) "Household waste", the same definition as in 10
38 CSR 80.2-010;

39 (9) "Paint assessment fee", cost added per container
40 of paint by producers. Such cost shall cover the cost to
41 operate and sustain the program authorized under this
42 section and shall be verified by an independent financial
43 auditor;

44 (10) "Post-consumer paint", architectural paint not
45 used and no longer wanted by a purchaser;

46 (11) "Producer", a manufacturer of architectural paint
47 that sells, offers for sale, or distributes the
48 architectural paint in this state under the producer's own
49 name or brand;

50 (12) "Program", the post-consumer paint collection
51 program established under this section;

52 (13) "Recycling", the separation and reuse or
53 remanufacture of materials that might otherwise be disposed
54 of as solid waste;

55 (14) "Representative organization", a nonprofit
56 organization established by producers to implement the
57 program;

58 (15) "Retailer", a person who offers architectural
59 paint or other allied products for sale at retail in this
60 state;

61 (16) "Very small quantity generator", equivalent to
62 "conditionally exempt small quantity generator".

63 2. Producers of architectural paint sold at retail in
64 this state may establish or join a representative
65 organization. The duties under this section shall be met by
66 the representative organization on behalf of all its member
67 producers. Any producer who is not a member of a
68 representative organization shall meet the duties under this
69 section separately.

70 3. (1) A representative organization or a producer of
71 architectural paint sold at retail in this state that is not
72 a member of such representative organization shall develop
73 and submit to the director for the director's approval a
74 plan for the establishment of a post-consumer paint
75 collection program. The program shall be structured to:

76 (a) Reduce the generation of post-consumer paint;

77 (b) Promote the reuse and recycling of post-consumer
78 paint;

79 (c) Manage the post-consumer paint waste stream using
80 environmentally sound management practices; and

81 (d) Limit the department's role to oversight
82 activities that include approving the program plan and
83 reviewing the annual report.

84 (2) The plan submitted under this section shall:

85 (a) Provide a list of participating producers and
86 brands covered by the program;

87 (b) Provide information on the architectural paint
88 products covered under the program, such as interior or
89 exterior water- and oil-based coatings, primers, sealers, or
90 wood coatings;

91 (c) Describe how the program will provide for
92 convenient and cost-effective statewide collection of post-
93 consumer paint in this state. The producers or
94 representative organization may coordinate the program with
95 existing household hazardous waste collection infrastructure
96 as is mutually agreeable. A paint retailer shall be
97 authorized by the producers or representative organization
98 as a paint collection site only if the paint retailer
99 voluntarily agrees to act as such and complies with all
100 applicable laws and regulations and the retail location is
101 consistent with the maintenance of a cost-effective network
102 of paint collection locations;

103 (d) Establish a goal for the number and geographic
104 distribution of sites for collection of post-consumer paint
105 based on the following criteria:

106 a. At least ninety percent of Missouri residents shall
107 have a collection site within a fifteen-mile radius and one
108 site will be established for every fifty thousand residents
109 of the state, unless otherwise approved by the director; or

110 b. If the program is unable to meet the requirements
111 of this subsection, a collection event or other department-
112 approved collection service will be scheduled on a periodic
113 basis to serve such residents;

114 (e) Describe how post-consumer paint will be managed
115 in the most environmentally and economically sound manner

116 using the following strategies in the following order:
117 reuse, recycling, energy recovery, and disposal;

118 (f) Describe education and outreach efforts to inform
119 consumers about the program. Such efforts should
120 incorporate at least:

121 a. Information about collection opportunities for post-
122 consumer paint;

123 b. Information about the charge for the operation of
124 the program that shall be included in the purchase price of
125 all architectural paint sold in this state; and

126 c. Efforts to promote the source reduction, reuse, and
127 recycling of architectural paint; and

128 (g) Establish a per-container cost to be added to
129 architectural paint sold in this state as a result of the
130 program. This per-container cost, known as the paint
131 assessment fee, shall be reviewed by an independent
132 financial auditor to assure that any added cost to paint
133 sold in this state as a result of the program does not
134 exceed the costs to operate and sustain the program in
135 accordance with sound management practices.

136 (3) The independent financial auditor required under
137 paragraph (g) of subdivision (2) of this subsection shall be
138 selected by the representative organization after
139 consultation with the department. The independent financial
140 auditor shall verify that the cost added to each unit of
141 paint will cover the costs of the program. The department
142 shall review the work product of the independent financial
143 auditor. The cost of any work performed by such independent
144 financial auditor shall be funded by the paint assessment
145 fees authorized by the program.

146 (4) No later than sixty days after the submission of a
147 plan under this section, the director shall make a written

148 determination of whether to approve the plan as submitted or
149 disapprove the plan. If the director finds the plan does
150 not meet the requirements of this section, the director
151 shall provide a written explanation of the nonconforming
152 items. Within sixty days following receipt of the
153 director's written explanation of items that do not meet the
154 requirements of this section, the representative
155 organization or the producer of architectural paint shall
156 submit a revised plan to the director for approval.

157 (5) The department shall enforce the producer's or the
158 representative organization's compliance with the plan and
159 may, by regulation or by using existing regulations
160 promulgated under sections 260.230, 260.240, and 260.249,
161 establish enforcement procedures and penalties.

162 (6) No later than the implementation date of the
163 program, information regarding the approved plan, the names
164 of participating producers, and the brands of architectural
165 paint covered by the program shall be posted on the
166 department's website and on the website of the
167 representative organization.

168 (7) The plan required under this subsection shall be
169 submitted to the department not later than twelve months
170 after the effective date of this section. The department
171 may, for good cause shown, grant an extension of the
172 deadline for submission.

173 (8) Nothing in this section shall be construed to
174 require the department to develop the plan or establish the
175 program authorized under this section. Such requirement
176 shall be the sole responsibility of the producers or
177 representative organization.

178 4. (1) The department shall establish an
179 administrative fee to be paid by each producer or

180 representative organization submitting a plan under this
181 section. The department shall set the fee at an amount
182 that, when paid by every producer or representative
183 organization that submits a plan, is adequate to reimburse
184 the department's full costs of administering this section.
185 The total amount of annual fees collected under this
186 subdivision shall not exceed the amount necessary to
187 reimburse costs incurred by the department to administer
188 this section. The department may consider relevant factors
189 when establishing the fee including, but not limited to, the
190 portion of architectural paint sold in the state by the
191 producer or the members of the representative organization
192 compared to the total amount of architectural paint sold in
193 the state by all producers or representative organizations
194 submitting a plan.

195 (2) Each producer or representative organization
196 implementing a plan under this section shall pay the
197 administrative fee required in subdivision (1) of this
198 subsection on or before July 1, 2024, and annually
199 thereafter. Each year after the initial payment, the annual
200 administrative fee shall not exceed five percent of the
201 aggregate program fee added to the cost of all architectural
202 paint sold by producers in the state for the preceding
203 calendar year. The department may extend the time for
204 payment upon good cause shown.

205 5. Upon implementation of the program, each producer
206 shall include in the price of any architectural paint sold
207 to retailers and distributors in this state the per-
208 container amount, known as the paint assessment fee, in the
209 approved plan. No retailer or distributor shall deduct such
210 amount from the purchase price.

211 6. (1) After the program is implemented, no producer
212 or retailer shall sell or offer for sale architectural paint
213 to any person in this state unless the producer of a paint
214 brand or a representative organization is implementing or
215 participating in the program as required by this section.

216 (2) A retailer shall be deemed to be in compliance
217 with this section if, on the date the architectural paint
218 was offered for sale, the producer is listed on the
219 department's website as implementing or participating in the
220 program or if the paint brand is listed on the department's
221 website as being included in the program.

222 (3) A paint collection site authorized under this
223 section shall not charge any additional amount for the
224 disposal of paint when the paint is offered for disposal.

225 (4) A producer or the representative organization that
226 organizes the collection, transport, and processing of post-
227 consumer paint in accordance with the program shall not be
228 liable for any claim of a violation of antitrust, restraint
229 of trade, unfair trade practice, or other anticompetitive
230 activity arising from conduct undertaken in accordance with
231 the program under this section.

232 (5) Before March thirty-first of each year, the
233 producers or representative organization shall submit an
234 annual report for the previous year to the director that
235 details the program. The first report shall be submitted
236 after the first full year of implementation. The director
237 may, for good cause shown, extend the deadline for filing
238 the report. The report or information relating to the
239 report shall be posted on the department's website and on
240 the website of the representative organization. The report
241 shall contain at least the following:

242 (a) A description of the methods used to collect,
243 transport, and process post-consumer paint in this state;
244 (b) The volume and type of post-consumer paint
245 collected by method of disposition, containing information
246 about reuse, recycling, other methods of processing, and any
247 other related and appropriate information;
248 (c) Samples of educational materials provided to
249 consumers of architectural paint;
250 (d) The total cost of the program; and
251 (e) An independent financial audit completed by an
252 individual financial auditor chosen by the producers or the
253 representative organization.

254 (6) Financial, production, or sales data reported to
255 the department by a producer or by the representative
256 organization shall not be subject to disclosure, but the
257 director may release a summary form of such data that does
258 not disclose financial, production, or sales data of the
259 producer, retailer, or representative organization.

260 (7) The producers or the representative organization
261 shall implement the program required under this section on
262 January 1, 2025, or six months after the approval of the
263 plan under this section, whichever later occurs.

264 7. (1) Generators of household wastes and
265 conditionally exempt small quantity generators may transport
266 or send architectural paints to a paint collection site to
267 the extent permitted by a program approved by the director.

268 (2) Paint collection sites may collect and temporarily
269 store architectural paints generated by entities specified
270 in subdivision (1) of this subsection in accordance with the
271 requirements of the program in lieu of any otherwise
272 applicable requirements of state laws or regulations.

273 (3) Nothing in this section shall be construed to
274 restrict the collection of architectural paint by a program
275 where such collection is authorized by any other state laws
276 or regulations.

277 (4) Nothing in this section shall be construed to
278 affect any requirements applicable to facilities that treat,
279 dispose, or recycle architectural paint under any other
280 state laws or regulations.

281 8. The director may promulgate all necessary rules and
282 regulations for the administration of this section. Any
283 rule or portion of a rule, as that term is defined in
284 section 536.010, that is created under the authority
285 delegated in this section shall become effective only if it
286 complies with and is subject to all of the provisions of
287 chapter 536 and, if applicable, section 536.028. This
288 section and chapter 536 are nonseverable and if any of the
289 powers vested with the general assembly pursuant to chapter
290 536 to review, to delay the effective date, or to disapprove
291 and annul a rule are subsequently held unconstitutional,
292 then the grant of rulemaking authority and any rule proposed
293 or adopted after August 28, 2023, shall be invalid and void.

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