

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 936

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 one new section, to be known as section 701.151, to read as follows:

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

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

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

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

(4) "Conditionally exempt small quantity generator", the same definition as "very small generator" under 40 CFR 260.10;

(5) "Department", the department of natural resources;

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

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

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

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

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

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

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

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

(11) "Producer", a manufacturer of architectural paint that sells, offers for sale, or distributes the architectural paint in this state under the producer's own name or brand. "Producer" does not include a retailer who sells, offers for sale, or distributes within or into the state architectural paint manufactured or trademarked by a person other than the retailer;

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

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

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

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

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

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

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

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

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

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

(2) The plan submitted under this section shall:

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

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

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

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

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

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

(e) Describe how post-consumer paint will be managed in the most environmentally and economically sound manner using the following strategies in the following order: reuse, recycling, energy recovery, and disposal;

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

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

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

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

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

(h) Describe how the program will incorporate and compensate service providers for activities conducted under the program that may include:

a. The collection of post-consumer architectural paint and architectural paint containers through permanent collection sites, collection events, or curbside services;

b. The reuse or processing of post-consumer architectural paint at a permanent collection site; and

c. The transportation, recycling, and proper disposal of post-consumer architectural paint.

(3) The independent financial auditor required under paragraph (g) of subdivision (2) of this subsection shall be selected by the representative organization after consultation with the department. The independent financial auditor shall verify that the cost added to each unit of

paint will cover the costs of the program. The department shall review the work product of the independent financial auditor. The cost of any work performed by such independent financial auditor shall be funded by the paint assessment fees authorized by the program.

(4) Each manufacturer under the plan shall include in the price of any architectural paint sold to retailers or distributors in the state the per container amount of the fee set forth in the plan or fee adjustment. If a representative organization implements the plan for a manufacturer, the manufacturer shall be responsible for filing, reporting, and remitting any fee assessed under this section for each container of architectural paint to the representative organization. A retailer or distributor shall not deduct the amount of the fee from the purchase price of any architectural paint the retailer or distributor sells.

(5) No later than sixty days after the submission of a plan under this section, the director shall make a written determination of whether to approve the plan as submitted or disapprove the plan. If the director finds the plan does not meet the requirements of this section, the director shall provide a written explanation of the nonconforming items. Within sixty days following receipt of the director's written explanation of items that do not meet the requirements of this section, the representative organization or the producer of architectural paint shall submit a revised plan to the director for approval.

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

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

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

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

(10) Nothing in this section shall require a retailer to track, file, report, submit, or remit a fee assessed under this section, sales data, or any other information on behalf of a manufacturer, distributor, or representative organization. Nothing in this section shall prohibit a manufacturer and a retailer from entering into remitter agreements.

4. (1) The department shall establish an administrative fee to be paid by each producer or representative organization submitting a plan under this section. The department shall set the fee at an amount that, when paid by every producer or representative organization that submits a plan, is adequate to reimburse the department's full costs of administering this section. The total amount of annual fees collected under this subdivision shall not exceed the amount necessary to reimburse costs incurred by the department to administer

this section. The department may consider relevant factors when establishing the fee including, but not limited to, the portion of architectural paint sold in the state by the producer or the members of the representative organization compared to the total amount of architectural paint sold in the state by all producers or representative organizations submitting a plan.

(2) Each producer or representative organization implementing a plan under this section shall pay the administrative fee required in subdivision (1) of this subsection on or before July 1, 2025, and annually thereafter. Each year after the initial payment, the annual administrative fee shall not exceed five percent of the aggregate program fee added to the cost of all architectural paint sold by producers in the state for the preceding calendar year. The department may extend the time for payment upon good cause shown.

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

6. Retailers may incorporate the fee as part of the price amount displayed to consumers of architectural products. Retailers shall not be required to incorporate the fee as part of the price amount displayed to consumers for architectural products, provided that the retailers make information about the fee available to consumers of architectural paint products prior to purchase.

7. (1) After the program is implemented, no producer or retailer shall sell or offer for sale architectural paint to any person in this state unless the producer of a paint

brand or a representative organization is implementing or participating in the program as required by this section.

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

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

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

(5) Before March thirty-first of each year, the producers or representative organization shall submit an annual report for the previous year to the director that details the program. The first report shall be submitted after the first full year of implementation. The director may, for good cause shown, extend the deadline for filing the report. The report or information relating to the report shall be posted on the department's website and on the website of the representative organization. The department shall also submit a copy of the report to the Missouri house of representatives and senate within fifteen days of receipt. The report shall contain at least the following:

(a) A description of the methods used to collect, transport, and process post-consumer paint in this state;

(b) The volume and type of post-consumer paint collected by method of disposition, containing information about reuse, recycling, other methods of processing, and any other related and appropriate information;

(c) Samples of educational materials provided to consumers of architectural paint;

(d) The total cost of the program; and

(e) An independent financial audit completed by an individual financial auditor chosen by the producers or the representative organization.

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

(7) The producers or the representative organization shall implement the program required under this section on January 1, 2026, or six months after the approval of the plan under this section, whichever later occurs.

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

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

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

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

9. The director may promulgate all necessary rules and regulations for the administration of this section. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2024, shall be invalid and void.