



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB3692

Introduced 1/21/2022, by Sen. Linda Holmes

SYNOPSIS AS INTRODUCED:

New Act

Creates the Paint Stewardship Act. Contains the findings of the General Assembly. Provides that manufacturers of architectural paint sold at retail in the State or representative organizations shall submit to the Director of the Environmental Protection Agency a plan for the establishment of a postconsumer paint stewardship program. Requires the program to meet specified requirements. Provides that manufacturers or retailers shall not sell or offer for sale architectural paint to any person in the State unless the manufacturer of a paint brand or representative organization is implementing an approved paint stewardship plan. Prohibits the incineration of leftover architectural paint collected pursuant to an approved paint stewardship plan. Provides that manufacturers or representative organizations shall submit reports with specified requirements. Provides that manufacturers or representative organizations participating in a postconsumer paint stewardship program shall not be liable for any claim of a violation of antitrust, restraint of trade, unfair trade practice, or other anticompetitive conduct arising from conduct undertaken in accordance with the program. Provides administrative and oversight fees to be paid to the Agency. Provides that manufacturers or representative organizations shall implement the postconsumer paint collection plan within 6 months of the date that the program plan is approved. Contains provisions regarding postconsumer paint from households and small businesses. Contains other provisions.

LRB102 22934 CPF 32088 b

1 AN ACT concerning safety.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the Paint
5 Stewardship Act.

6 Section 5. Findings. The General Assembly finds that:

7 (1) Leftover architectural paints present significant
8 waste management issues for counties and municipalities.
9 Managing the end-of-life of architectural paint can be costly
10 and present environmental, health, and safety risks if not
11 properly managed.

12 (2) Nationally, an estimated 10% of architectural paint
13 purchased by consumers is leftover. Current governmental
14 programs collect only a fraction of the potential leftover
15 paint for proper reuse, recycling, or disposal. In northern
16 Illinois, there are only 4 permanent household hazard waste
17 facilities and these facilities do not typically accept latex
18 paint, the most common paint purchased by consumers.

19 (3) It is in the best interest of this State for paint
20 manufacturers to assume responsibility for development and
21 implementation of a cost-effective paint stewardship program
22 that will: educate consumers on strategies to reduce the
23 generation of leftover paint; provide opportunities to reuse

1 leftover paint; and collect, transport, and process leftover
2 paint for end-of-life management, including reuse, recycling,
3 energy recovery, and disposal. Requiring paint manufacturers
4 to assume responsibility for the collection, recycling, reuse,
5 transportation, and disposal of leftover paint will provide
6 more opportunities for consumers to properly manage their
7 leftover paint, provide fiscal relief for this State and local
8 governments in managing leftover paint, keep paint out of the
9 waste stream, and conserve natural resources.

10 (4) Similar architectural paint stewardship programs are
11 currently operating in 9 jurisdictions and are successfully
12 diverting a significant portion of the collected paint waste
13 from landfills. These paint stewardship programs are saving
14 counties and municipalities the cost of managing paint waste
15 and have been successful at recycling leftover paint into
16 recycled paint products as well as other products. For
17 instance, in the state of Oregon, 64% of the latex paint
18 collected in the 2019-2020 fiscal year was recycled into paint
19 products; and, in Minnesota, 48% of the latex paint collected
20 during the same time period was reused or recycled into paint
21 products. Given the lack of access to architectural paint
22 collection programs in Illinois, especially for leftover latex
23 architectural paint, and the demonstrated ability of the paint
24 industry to collect and recycle a substantial portion of
25 leftover architectural paint, this legislation is necessary.
26 It will create a statewide program that diverts a significant

1 portion of paint waste from landfills and facilitates
2 recycling of leftover paint into paint and other products.

3 (5) Establishing a paint stewardship program in Illinois
4 will create jobs as the marketplace adjusts to the needs of a
5 robust program that requires transporters and processors.
6 Certain infrastructure already exists in the State and the
7 program may attract additional resources.

8 (6) Legislation is needed to establish this program in
9 part because of the risk of antitrust lawsuits. The program
10 involves activities by competitors in the paint industry and
11 may affect the costs or prices of those competitors. As
12 construed by the courts, the antitrust laws impose severe
13 constraints on concerted action by competitors that affect
14 costs or prices. Absent State legislation, participation in
15 this program would entail an unacceptable risk of class action
16 lawsuits. The risk can be mitigated by legislation that would
17 bar application of federal antitrust law under the "state
18 action" doctrine. Under that doctrine, federal antitrust law
19 does not apply to conduct that is (1) undertaken pursuant to a
20 clearly expressed and affirmatively articulated state policy
21 to displace or limit competition, and (2) actively supervised
22 by the State.

23 (7) To ensure that this defense will be available to
24 protect participants in the program, it is important for State
25 legislation to be specific about the conduct it is authorizing
26 and to express clearly that the State is authorizing that

1 conduct pursuant to a conscious policy decision to limit the
2 unfettered operation of market forces. It is also critical for
3 the legislation to provide for active supervision of the
4 conduct that might otherwise be subject to antitrust attack.
5 In particular, the legislation must provide for active
6 supervision of the decisions concerning the assessments that
7 will fund the program. A clear articulation of the State's
8 purposes and policies and provisions for active State
9 supervision of the program will ensure that industry
10 participation in the program will not trigger litigation.

11 (8) To ensure that the costs of the program are
12 distributed in an equitable and competitively neutral manner,
13 the program will be funded through an assessment on each
14 container of paint sold in this State. That assessment will be
15 sufficient to recover, but not exceed, the costs of sustaining
16 the program and will be reviewed and approved by the Illinois
17 Environmental Protection Agency. Funds collected through the
18 assessment will be used by the representative organization to
19 operate and sustain the program.

20 Section 10. Definitions. In this Section:

21 "Agency" means the Environmental Protection Agency.

22 "Architectural paint" means interior and exterior
23 architectural coatings sold in containers of 5 gallons or
24 less. "Architectural paint" does not include industrial
25 original equipment or specialty coatings.

1 "Collection site" means any location or event at which
2 architectural paint is accepted into a postconsumer paint
3 collection program pursuant to a postconsumer paint collection
4 program plan.

5 "Director" means the director of the Environmental
6 Protection Agency.

7 "Environmentally sound management practices" means
8 procedures for the collection, storage, transportation, reuse,
9 recycling, and disposal of architectural paint to be
10 implemented by a manufacturer or representative organization
11 or by the manufacturer's or representative organization's
12 contracted partners to comply with all applicable federal,
13 State, and local laws and any rules, regulations, and
14 ordinances for the protection of human health and the
15 environment. These procedures shall address adequate record
16 keeping, tracking and documenting of the final disposition of
17 materials, and appropriate environmental liability coverage
18 for the representative organization.

19 "Household waste" has the same meaning as defined in 40
20 CFR 261.4(b)(1).

21 "Postconsumer paint" means architectural paint not used
22 and no longer wanted by a purchaser.

23 "Manufacturer" means a manufacturer of architectural paint
24 who sells, offers for sale, or distributes the architectural
25 paint in the State under the manufacturer's own name or brand.

26 "Program" means the postconsumer paint stewardship program

1 established pursuant to Section 15.

2 "Recycling" means a method, technique, or process designed
3 to remove any contaminant from waste so as to render the waste
4 reusable, or any process by which materials that would
5 otherwise be disposed of or discarded are collected,
6 separated, or processed and returned to the economic
7 mainstream in the form of raw materials or products.

8 "Representative organization" means a nonprofit
9 organization established by a manufacturer to implement the
10 postconsumer paint stewardship program.

11 "Retailer" means a company that offers architectural paint
12 or other allied products for retail sale in the State.

13 "Very small quantity generator" has the same meaning as
14 defined in 40 CFR 260.10.

15 Section 15. Paint stewardship program plan.

16 (a) A manufacturer of architectural paint sold at retail
17 in the State or a representative organization shall submit to
18 the Director a plan for the establishment of a postconsumer
19 paint stewardship program. The program shall seek to reduce
20 the generation of postconsumer paint, promote its reuse and
21 recycling, and manage the waste stream using environmentally
22 sound management practices.

23 (b) The plan submitted by the manufacturer or
24 representative organization to the Agency under this Section
25 shall:

1 (1) Provide a list of participating manufacturers and
2 brands covered by the program.

3 (2) Provide information on the architectural paint
4 products covered under the program, such as interior or
5 exterior water-based and oil-based coatings, primers,
6 sealers, or wood coatings.

7 (3) Describe how it will provide for convenient and
8 cost-effective statewide collection of postconsumer
9 architectural paint in the State. The manufacturer or
10 representative organization may coordinate the program
11 with existing household hazardous waste collection
12 infrastructure as is mutually agreeable. A paint retailer
13 may be authorized by the manufacturer or representative
14 organization as a paint collection site if the paint
15 retailer volunteers to act as such, complies with all
16 applicable laws, rules, and regulations, and the retail
17 location is consistent with the maintenance of a
18 cost-effective network of paint collection locations.

19 (4) Establish a goal for the number and geographic
20 distribution of collection sites for postconsumer
21 architectural paint using geographic modeling and the
22 following criteria:

23 (A) at least 90% of State residents shall have a
24 collection site within a 15-mile radius; and

25 (B) one site shall be available for every 50,000
26 residents of an Urbanized Area, as defined by the U.S.

1 Census Bureau, unless otherwise approved by the
2 Director.

3 (5) Describe how postconsumer paint will be managed in
4 an environmentally and economically sound manner using the
5 following strategies and in the following order: reuse,
6 recycling, energy recovery, and disposal. Incineration
7 within the State shall not be utilized.

8 (6) Describe education and outreach efforts to inform
9 consumers about the program. These materials should
10 include:

11 (A) information about collection opportunities for
12 postconsumer paint;

13 (B) information about the fee for the operation of
14 the program that shall be included in the purchase
15 price of all architectural paint sold in the State;
16 and

17 (C) efforts to promote the source reduction,
18 reuse, and recycling of architectural paint.

19 (7) Be reviewed by an independent auditor to assure
20 that any added fee to paint sold in the State as a result
21 of the postconsumer paint stewardship program does not
22 exceed the costs to operate and sustain the program in
23 accordance with sound management practices. The
24 independent auditor shall verify that the amount added to
25 each unit of paint will cover the costs and sustain the
26 postconsumer paint stewardship program.

1 (c) A manufacturer or representative organization shall
2 select the independent auditor under paragraph (7) of
3 subsection (b) in consultation with the Agency. The Agency
4 shall review the work product of the independent auditor. The
5 cost of any work performed by the independent auditor shall be
6 funded by the program.

7 (d) Not later than 60 days after submission of the plan
8 under this Section, the Director shall make a determination in
9 writing whether to approve the plan as submitted or disapprove
10 the plan.

11 (e) The Agency shall enforce the plan and may, by rule or
12 regulation, establish enforcement procedures. If circumstances
13 require an adjustment of the paint stewardship fee, the
14 manufacturer or representative organization shall request the
15 adjustment by submitting to the Agency a justification for the
16 adjustment as well as financial reports to support the
17 request, including a 5-year projection of the financial status
18 of the organization. The Agency shall review the request to
19 determine if the proposed fee adjustment will generate
20 revenues sufficient to pay the program expenses, including any
21 accumulated debt, and develop a reasonable reserve level
22 sufficient to sustain the program. If a decrease in the paint
23 fee is requested, the Agency shall review the request to
24 determine if the proposed fee adjustment and the resulting
25 decreased revenue is sufficient to pay program expenses and
26 maintain a reasonable reserve level sufficient to sustain the

1 program.

2 (f) No later than the implementation date of the program,
3 information regarding the approved plan, the names of
4 participating manufacturers, and the brands of architectural
5 paint covered by the program shall be posted on the Agency's
6 website and on the website of the manufacturer or
7 representative organization.

8 (g) Upon implementation of the program, each manufacturer
9 shall include in the price of any architectural paint sold to
10 retailers and distributors in the State the per container
11 amount in the approved program plan. Manufacturers are
12 responsible for filing, reporting, and remitting the paint
13 stewardship assessment for each container of architectural
14 paint to the representative organization. A retailer or
15 distributor shall not deduct this amount from the purchase
16 price.

17 Section 20. Incineration prohibited. No person may
18 incinerate leftover architectural paint collected pursuant to
19 an approved paint stewardship plan as required by Section 15.

20 Section 25. Plan submission. The plan required by Section
21 15 shall be submitted not later than 12 months after the
22 authorization of the program is final. The Agency may grant an
23 extension of time to submit the plan for good cause.

1 Section 30. Sale of paint.

2 (a) A manufacturer or retailer shall not sell or offer for
3 sale architectural paint to any person in the State unless the
4 manufacturer of a paint brand or the manufacturer's
5 representative organization is implementing an approved paint
6 stewardship plan as required by Section 15.

7 (b) A retailer shall be in compliance with this Act if, on
8 the date the architectural paint was offered for sale, the
9 retailer's manufacturer is listed on the Agency's website as
10 implementing or participating in an approved program or if the
11 paint brand is listed on the Agency's website as being
12 included in the program.

13 (c) A paint collection site authorized under the
14 provisions of this Act shall not charge any additional amount
15 for the disposal of paint when it is offered for disposal.

16 (d) No retailer is required to participate in a paint
17 stewardship program as a collection site. A retailer may
18 participate as a paint collection site on a voluntary basis.

19 (e) Nothing in this Act shall require a retailer to track,
20 file, report, submit, or remit a paint stewardship assessment,
21 sales data, or any other information on behalf of a
22 manufacturer, distributor, or representative organization.

23 Section 35. Liability. A manufacturer or representative
24 organization participating in a postconsumer paint stewardship
25 program shall not be liable for any claim of a violation of

1 antitrust, restraint of trade, unfair trade practice, or other
2 anticompetitive conduct arising from conduct undertaken in
3 accordance with the program.

4 Section 40. Annual report. Annually, a manufacturer or
5 representative organization shall submit a report to the
6 Agency that details the program. The report shall include:

7 (1) a description of the methods used to collect and
8 transport postconsumer paint collected in the State;

9 (2) the volume and type of postconsumer paint
10 collected and a description of the methods used to process
11 the paint, including reuse, recycling, and other methods;

12 (3) samples of educational materials provided to
13 consumers of architectural paint; and

14 (4) the total cost of the program and an independent
15 financial audit. An independent financial auditor shall be
16 chosen by the manufacturer or representative organization.
17 The report or information relating to the report shall be
18 posted on the Agency's website and on the website of the
19 manufacturer or representative organization.

20 Section 45. Annual report submission. A manufacturer or
21 representative organization shall submit the first annual
22 report detailing the postconsumer paint collection program as
23 required by Section 15 to the Director within 14 months
24 following implementation of the program, and annually

1 thereafter. The Agency may extend the time for submission of
2 the annual report for cause shown.

3 Section 50. Disclosure. Financial, production, or sales
4 data reported to the Agency by a manufacturer, retailer, or
5 representative organization shall not be subject to
6 disclosure, but the Director may release a summary form of the
7 data that does not disclose financial, production, or sales
8 data of the manufacturer, retailer, or representative
9 organization.

10 Section 55. Program plan submission fee. A manufacturer or
11 representative organization submitting a program plan shall
12 pay an administrative fee to the Agency at the time of
13 submission. The Agency may establish a variable fee based on
14 relevant factors, including, but not limited to, the portion
15 of architectural paint sold in the State by members of the
16 manufacturer or representative organization compared to the
17 total amount of architectural paint sold in the State by all
18 manufacturers or representative organizations that submit a
19 plan.

20 Section 60. Oversight fee. A manufacturer or
21 representative organization operating a stewardship program
22 shall pay to the Agency the costs it incurs in overseeing the
23 stewardship program. The Agency shall set the fee at an amount

1 that, when paid by every manufacturer or representative
2 organization that submits a plan, is adequate to reimburse the
3 Agency's full costs of administering this Act. The total
4 amount of annual fees collected under this Section must not
5 exceed the amount necessary to reimburse costs incurred by the
6 Agency to administer this Act.

7 Section 65. Timing of oversight fee. A manufacturer or
8 representative organization subject to Section 60 must pay the
9 Agency's administrative fee annually. Each year after the
10 initial payment, the annual administrative fee may not exceed
11 5% of the aggregate stewardship fee added to the cost of all
12 architectural paint sold by manufacturers in the State for the
13 preceding calendar year. The Agency may extend the time for
14 payment upon good cause shown.

15 Section 70. Implementation. A manufacturer or
16 representative organization shall implement the postconsumer
17 paint collection plan within 6 months of the date that the
18 program plan is approved. The Agency may extend the date of
19 implementation for good cause shown.

20 Section 75. Postconsumer paint from households and small
21 businesses.

22 (a) Generators of household waste and very small quantity
23 generators are authorized to transport or send their

1 architectural paints to a paint collection site to the extent
2 permitted by a postconsumer paint stewardship program approved
3 by the Director.

4 (b) Paint collection sites are authorized to collect and
5 temporarily store architectural paints generated by persons
6 specified in subsection (a), in accordance with the
7 requirements of the paint stewardship program, in lieu of any
8 otherwise applicable hazardous waste or solid waste laws,
9 rules, or regulations.

10 (c) Nothing in this Act shall be construed as restricting
11 the collection of architectural paint by a postconsumer paint
12 stewardship program where the collection is authorized under
13 any otherwise applicable hazardous waste or solid waste laws,
14 rules, or regulations.

15 (d) Nothing in this Act shall be construed to affect any
16 requirements applicable to facilities that treat, dispose, or
17 recycle architectural paint under any otherwise applicable
18 hazardous waste or solid waste laws, rules, or regulations.