



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

SB1705

Introduced 2/15/2013, by Sen. Linda Holmes

SYNOPSIS AS INTRODUCED:

New Act
30 ILCS 105/5.826 new

Creates the Paint Stewardship Act. Requires each producer to join the representative organization. Requires the representative organization to submit a plan to the Director of the Environmental Protection Agency for the establishment of a paint stewardship program. Sets forth requirements for the program. Requires the representative organization, in conjunction with an independent auditor, to propose, and the Agency to approve, a fee that will be added to the cost of all architectural paint sold to retailers and distributors in this State. Creates a state-action antitrust exemption for actions taken under the Act. Prohibits, after the implementation of the paint stewardship program, a producer, distributor, or retailer from selling or offering for sale architectural paint to any person in the State if the producer is not a member of the representative organization. Authorizes the imposition of civil penalties for violations of the Act. Sets forth fees for the program. Amends the State Finance Act. Creates the Paint Stewardship Fund. Effective January 1, 2015.

LRB098 06358 MGM 36400 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. Definitions.

7 "Agency" means the Illinois Environmental Protection
8 Agency.

9 "Architectural paint" means interior and exterior
10 architectural coatings sold in containers of 5 gallons or less.
11 "Architectural paint" does not include industrial, original
12 equipment, or specialty coatings.

13 "Director" means the Director of the Illinois
14 Environmental Protection Agency.

15 "Distributor" means a company that has a contractual
16 relationship with one or more producers to market and sell
17 architectural paint to retailers in this State.

18 "Energy recovery" means the process by which all or a
19 portion of solid waste materials are processed or combusted in
20 order to use the heat content or other forms of energy derived
21 from those solid waste materials.

22 "Environmentally sound management practices" means
23 procedures for the collection, storage, transportation, reuse,

1 recycling, and disposal of architectural paint, to be
2 implemented by the representative organization or that
3 organization's contracted partners to ensure (i) compliance
4 with all applicable federal, State, and local laws,
5 regulations, and ordinances and (ii) the protection of human
6 health and the environment. Environmentally sound management
7 practices include, but are not limited to, record-keeping, the
8 tracking and documenting of the fate of post-consumer paint
9 inside and outside of this State, and environmental liability
10 coverage for professional services and the operations of the
11 contractors working on behalf of the representative
12 organization.

13 "Fund" means the Paint Stewardship Fund.

14 "Paint stewardship assessment" means the amount added to
15 the purchase price of architectural paint sold in this State
16 that is necessary to cover the cost of collecting,
17 transporting, and processing post-consumer paint by the
18 representative organization pursuant to the paint stewardship
19 program.

20 "Post-consumer paint" means architectural paint that is
21 not used and that is no longer wanted by a purchaser of
22 architectural paint.

23 "Producer" means a manufacturer of architectural paint who
24 sells, offers for sale, distributes, or contracts to distribute
25 architectural paint in this State.

26 "Recycling" means any process by which discarded products,

1 components, or by-products are transformed into new, usable, or
2 marketable materials in a manner in which the original products
3 may lose their identity. "Recycling" does not include energy
4 recovery.

5 "Representative organization" means the nonprofit
6 organization created by producers to implement the paint
7 stewardship program described in Section 10 of this Act.

8 "Retailer" means any person who offers architectural paint
9 for sale at retail in this State.

10 "Reuse" means the return of a product into the economic
11 stream for use in the same kind of application as the product
12 was originally intended to be used, without a change in the
13 product's identity.

14 "Sell" or "sale" means any transfer of title for
15 consideration, including, but not limited to, remote sales
16 conducted through sales outlets, catalogues, the Internet, or
17 any other similar electronic means.

18 Section 10. Paint stewardship program.

19 (a) On or before March 1, 2015, each producer shall join
20 the representative organization, and the representative
21 organization shall submit a plan for the establishment of the
22 paint stewardship program described in this Section to the
23 Director for approval. The paint stewardship program shall:

24 (1) minimize public sector involvement in the
25 management of post-consumer paint by: (A) reducing the

1 generation of post-consumer paint, (B) promoting the reuse
2 and recycling of post-consumer paint, and (C) negotiating
3 and executing agreements to collect, transport, reuse,
4 recycle, burn for energy recovery, and dispose of
5 post-consumer paint using environmentally sound management
6 practices;

7 (2) provide for convenient and available Statewide
8 collection of post-consumer paint that, at a minimum,
9 provides for collection rates and levels of convenience
10 that are equal to, or greater than, those provided by the
11 collection programs available to consumers before the
12 implementation of the paint stewardship program;

13 (3) propose a paint stewardship assessment; and

14 (4) include a funding mechanism that requires each
15 producer who participates in the representative
16 organization to remit to the representative organization
17 payment of the paint stewardship assessment for each
18 container of architectural paint the producer sells in this
19 State.

20 (b) The plan shall identify each producer participating in
21 the paint stewardship program and the brands of architectural
22 paint sold in this State covered by the program, and it shall
23 address the coordination of the paint stewardship program with
24 existing household hazardous waste collection infrastructure,
25 as much as is reasonably feasible and mutually agreeable.

26 (c) The Director may approve a plan that meets the

1 requirements of subsections (a) and (b). Not later than 3
2 months after submission of the plan, the Director shall
3 determine whether to approve the plan.

4 (d) Not later than 3 months after the date the plan is
5 approved pursuant to subsection (c), the representative
6 organization shall implement the paint stewardship program.

7 (e) Any retailer may participate, on a voluntary basis and
8 in accordance with any applicable provision of law or
9 regulation, as a paint collection point.

10 (f) Not later than the implementation date of the paint
11 stewardship program, the Agency shall list the names of
12 participating producers and the brands of architectural paint
13 covered by the paint stewardship program on its website.

14 (g) The Paint Stewardship Fund is hereby created as a
15 special fund in the State Treasury. Upon submission of the
16 paint stewardship plan required by this Section, each
17 representative organization shall pay to the Agency a fee of
18 \$10,000, which the Agency shall deposit into the Paint
19 Stewardship Fund. Upon approval of a paint stewardship program,
20 the representative organization shall also pay to the Agency an
21 annual fee of \$20,000, which the Agency shall deposit into the
22 Fund. Moneys in the Fund and interest attributable to those
23 moneys shall be appropriated to the Agency for the following
24 purposes: review and approval of plans for the establishment of
25 a paint stewardship program, oversight and enforcement of the
26 program, and other reasonable administrative costs of the

1 Agency.

2 Section 15. Paint stewardship assessment.

3 (a) On or before March 1, 2015, the representative
4 organization shall propose a uniform paint stewardship
5 assessment for all architectural paint sold in this State. An
6 independent auditor shall review the proposed paint
7 stewardship assessment to ensure that it does not exceed the
8 costs of maintaining the paint stewardship program, and the
9 auditor shall recommend an amount for the paint stewardship
10 assessment to the Agency. The Agency shall approve the paint
11 stewardship assessment.

12 (b) On and after the date of implementation of the paint
13 stewardship program, the paint stewardship assessment shall be
14 added to the cost of all architectural paint sold to retailers
15 and distributors in this State by each producer. On and after
16 the implementation date, each retailer or distributor, as
17 applicable, shall add the amount of the paint stewardship
18 assessment to the purchase price of all architectural paint
19 sold in this State.

20 Section 20. State-action antitrust exemption. Each
21 producer and the representative organization shall be immune
22 from liability for any claim of a violation of antitrust law or
23 unfair trade practice if the conduct is a violation of
24 antitrust law, to the extent the producer or representative

1 organization is exercising authority pursuant to the
2 provisions of this Act.

3 Section 25. Enforcement.

4 (a) On and after the implementation date of the paint
5 stewardship program, no producer, distributor, or retailer
6 shall sell or offer for sale architectural paint to any person
7 in this State if the producer of the architectural paint is not
8 a member of the representative organization.

9 (b) No retailer or distributor shall be found to be in
10 violation of the provisions of subsection (a) if, on the date
11 the architectural paint was ordered from the producer or its
12 agent, the producer or the subject brand of architectural paint
13 was listed on the Agency's website in accordance with the
14 provisions of subsection (f) of Section 10.

15 (c) The Director may, after providing notice and
16 opportunity to be heard, impose a civil penalty in the amount
17 of \$500 a day against any person who violates the terms of this
18 Act.

19 Section 30. Consumer education. Producers or the
20 representative organization shall provide consumers with
21 educational materials regarding the paint stewardship
22 assessment and paint stewardship program. Those materials
23 shall include, but not be limited to, information regarding
24 available end-of-life management options for architectural

1 paint offered through the paint stewardship program and
2 information that notifies consumers that a charge for the
3 operation of the paint stewardship program is included in the
4 purchase price of all architectural paint sold in this State.

5 Section 35. Report to the Environmental Protection Agency.
6 On or before October 15, 2016, and annually thereafter, the
7 representative organization shall submit a report to the
8 Director that details the paint stewardship program. The report
9 shall include, but not be limited to: (1) a description of the
10 methods used to collect, transport, and process post-consumer
11 paint in this State; (2) the volume of post-consumer paint
12 collected in this State; (3) the volume and type of
13 post-consumer paint collected in this State by method of
14 disposition, including reuse, recycling, and other methods of
15 processing; (4) the total cost of implementing the program, as
16 determined by an independent financial audit, as performed by
17 the independent auditor; and (5) samples of educational
18 materials provided to consumers of architectural paint and an
19 evaluation of the methods used to disseminate those materials.

20 Section 50. The State Finance Act is amended by adding
21 Section 5.826 as follows:

22 (30 ILCS 105/5.826 new)

23 Sec. 5.826. The Paint Stewardship Fund.

1 Section 99. Effective date. This Act takes effect January
2 1, 2015.