

SB3272



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

SB3272

Introduced 2/14/2014, by Sen. Linda Holmes

SYNOPSIS AS INTRODUCED:

New Act

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. Provides that no person shall incinerate architectural paint or industrial maintenance coatings in this State after July 1, 2016. Effective on January 1, 2015.

LRB098 19479 MGM 54651 b

A BILL FOR

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 2. Findings. The General Assembly finds that:

7 (a) Leftover architectural paints are a waste management
8 issue and present environmental, health, and safety risks,
9 especially to workers in the solid waste industry. During waste
10 collection and processing, wet paint can create spills and
11 splashes and oil paint and aerosol containers may rupture,
12 releasing fumes hazardous to workers, and the remaining liquids
13 contribute to leachate problems in landfills. Some local
14 governments provide collection sites or events for latex paint
15 in order to provide their residents with some disposal options
16 and to keep latex paint out of the solid waste stream. However,
17 residents and small businesses need more convenient options for
18 disposal of architectural paint. Drying latex for disposal is
19 difficult for many residents and this process wastes latex
20 paint that could otherwise be reused or recycled. Local
21 government special and moderate-risk waste collection programs
22 are heavily impacted by the cost of managing unwanted
23 architectural paints and these costs decrease the available

1 funds to address other hazardous and hard to handle materials.

2 (b) An estimated average of 10% of architectural paint
3 purchased becomes leftover paint nationally. Current programs
4 only collect a fraction of the potential leftover paint for
5 proper reuse, recycling, or disposal. There is not a
6 comprehensive Statewide end-of-life management plan for
7 architectural paint which results in significant missed
8 opportunities to reduce, reuse, and recycle paint.

9 (c) It is in the best interest of this State for paint
10 manufacturers to assume responsibility for development and
11 implementation of a cost-effective paint stewardship program
12 that will: develop and implement strategies to reduce the
13 generation of leftover paint; promote the reuse of leftover
14 paint; and collect, transport, and process leftover paint for
15 end-of-life management, including reuse, recycling, energy
16 recovery, and disposal. A paint stewardship program will follow
17 the paint waste management hierarchy for managing and reducing
18 leftover paint in the order as follows: reduce consumer
19 generation of leftover paint; reuse; recycle; and provide for
20 energy recovery and disposal. Requiring paint manufacturers to
21 assume responsibility for the collection, recycling, reuse,
22 transportation, and disposal of leftover paint will provide
23 more opportunities for consumers to properly manage their
24 leftover paint, provide fiscal relief for this State and local
25 governments in managing leftover paint, keep paint out of the
26 waste stream, and conserve natural resources.

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

15 (e) To ensure that this defense will be available to
16 protect participants in the program, it is important for State
17 legislation to be specific about the conduct it is authorizing,
18 and to express clearly that the State is authorizing that
19 conduct pursuant to a conscious policy decision to limit the
20 unfettered operation of market forces. It is also critical for
21 the legislation to provide for active supervision of the
22 conduct that might otherwise be subject to antitrust attack. In
23 particular, the legislation must provide for active
24 supervision of the decisions concerning the assessments that
25 will fund the program. A clear articulation of the State's
26 purposes and policies and provisions for active State

1 supervision of the program will ensure that industry
2 participation in the program will not trigger litigation.

3 (f) To ensure that the costs of the program are distributed
4 in an equitable and competitively neutral manner, the program
5 will be funded through an assessment on producers on each
6 container of paint sold in this State. That assessment will be
7 sufficient to recover, but not exceed, the costs of the program
8 and will be determined by the Illinois Environmental Protection
9 Agency. Funds collected through the assessment will be
10 submitted and used by the representative organization and will
11 not be remitted to producers or retailers.

12 Section 5. Definitions.

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

15 "Architectural paint" means interior and exterior
16 architectural coatings sold in containers of 5 gallons or less.

17 "Architectural paint" does not include adhesives and coatings
18 recommended by the manufacturer or importer solely for shop
19 applications or solely for application to non-stationary
20 objects, such as airplanes, ships, boats, automobiles,
21 railcars, equipment, and machinery. "Architectural paint" does
22 not include any coating not considered an architectural paint
23 under the USEPA's Architectural and Industrial Maintenance
24 Coatings Rule.

25 "Director" means the Director of the Illinois

1 Environmental Protection Agency.

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

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

19 "Fund" means the Solid Waste Management Fund.

20 "Industrial maintenance coating" means a high performance
21 architectural coating, including primers, sealers,
22 undercoaters, intermediate coats, and topcoats formulated and
23 recommended for application to substrates and labeled under the
24 USEPA's Architectural and Industrial Maintenance Coatings Rule
25 as, "for industrial use only", "for professional use only",
26 "not for residential use", or "not intended for residential

1 use".

2 "Paint stewardship assessment" means the amount paid to the
3 representative organization by producers of architectural
4 paint sold in this State that is necessary to cover the cost of
5 collecting, transporting, and processing post-consumer paint
6 by the representative organization under the paint stewardship
7 program.

8 "Post-consumer paint" means architectural paint that is
9 not used by a purchaser of architectural paint.

10 "Producer" means a manufacturer of architectural paint who
11 sells, offers for sale, distributes, or contracts to distribute
12 architectural paint in this State.

13 "Recycling, reclamation, or reuse" means a method,
14 technique, or process designed to remove any contaminant from
15 waste to render the waste reusable, or any process by which
16 materials that would otherwise be disposed of or discarded are
17 collected, separated, or processed and returned to the economic
18 mainstream in the form of raw materials or products.

19 "Representative organization" means the nonprofit
20 organization created by producers to implement the paint
21 stewardship program described in Section 10 of this Act.

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

24 "Sell" or "sale" means any transfer of title for
25 consideration, including, but not limited to, remote sales
26 conducted through sales outlets, catalogues, the Internet, or

1 any other similar electronic means.

2 "Shop application" means that a coating is applied to a
3 product or a component of a product in a factory, shop, or
4 other structure as part of a manufacturing, production, or
5 repairing process.

6 Section 10. Paint stewardship program.

7 (a) On or before March 1, 2016, each producer shall join
8 the representative organization, and the representative
9 organization shall submit a plan for the establishment of the
10 paint stewardship program described in this Section to the
11 Director. The paint stewardship program shall:

12 (1) minimize public sector involvement in the
13 management of post-consumer paint by: (A) reducing the
14 generation of post-consumer paint, (B) promoting the reuse
15 and recycling of post-consumer paint, and (C) negotiating
16 and executing agreements to collect, transport, reuse,
17 recycle, burn for energy recovery, and dispose of
18 post-consumer paint using environmentally sound management
19 practices;

20 (2) provide for convenient and available Statewide
21 collection of post-consumer paint that, at a minimum,
22 provides for collection rates and levels of convenience
23 that are equal to, or greater than, those provided by the
24 collection programs available to consumers before the
25 implementation of the paint stewardship program;

1 (3) propose a paint stewardship assessment;

2 (4) include a funding mechanism that requires each
3 producer who participates in the representative
4 organization to remit to the representative organization
5 payment of the paint stewardship assessment for each
6 container of architectural paint the producer sells in this
7 State;

8 (5) describe how the program provides for reasonably
9 convenient and available Statewide collection of leftover
10 paint from covered entities in urban and rural areas of the
11 State, including island communities; and

12 (6) use geographic information modeling to determine
13 the number and distribution of collection sites for the
14 following criteria: 90% of Illinois residents shall have a
15 permanent collection site within 15 miles by road; and one
16 additional permanent site shall be established for every
17 30,000 residents of a population center distributed to
18 provide convenient access in high traffic areas.

19 The representative organization shall maintain a Statewide
20 list of producers and post up to date collection locations on
21 its website.

22 (b) The plan shall identify each producer participating in
23 the paint stewardship program and the brands of architectural
24 paint sold in this State covered by the program, and it shall
25 address the coordination of the paint stewardship program with
26 existing household hazardous waste collection infrastructure,

1 as much as is reasonably feasible and mutually agreeable.

2 (c) Not later than 3 months after submission of the plan,
3 the Director shall determine whether the plan satisfies the
4 requirements of this Act.

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

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

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

15 (g) Upon submission of the paint stewardship plan required
16 by this Section, each representative organization shall pay to
17 the Agency a fee of \$10,000, which the Agency shall deposit
18 into the Solid Waste Management Fund. Upon approval of a paint
19 stewardship program, the representative organization shall
20 also pay to the Agency an annual fee of \$20,000, which the
21 Agency shall deposit into the Fund.

22 (h) The Agency shall review the paint stewardship program
23 plans it receives for completeness and shall notify the
24 representative organization in writing if a plan is incomplete.
25 Within 30 days after receiving a notification of incompleteness
26 from the Agency, the representative organization shall submit

1 to the Agency a plan that contains all of the required
2 information. A new plan or amendment is required to be
3 submitted to the Department for approval when:

4 (1) there is a change to the amount of the assessment;

5 (2) there is an addition to the products covered under
6 the program; or

7 (3) there is a revision of the product stewardship
8 organization's goals.

9 Section 15. Paint stewardship assessment.

10 (a) On or before March 1, 2016, the representative
11 organization shall propose a uniform paint stewardship
12 assessment for all architectural paint sold in this State. An
13 independent auditor shall review the proposed paint
14 stewardship assessment to ensure that it does not exceed the
15 costs of maintaining the paint stewardship program, and the
16 auditor shall recommend an amount for the paint stewardship
17 assessment to the Agency.

18 (b) On and after the date of implementation of the paint
19 stewardship program, the paint stewardship assessment shall be
20 added to the cost of all architectural paint sold to retailers
21 and distributors in this State by each producer. On and after
22 the implementation date, each retailer or distributor, as
23 applicable, shall add the amount of the paint stewardship
24 assessment to the purchase price of all architectural paint
25 sold in this State.

1 Section 20. State-action antitrust exemption. Each
2 producer and the representative organization shall be immune
3 from liability for any claim of a violation of antitrust law or
4 unfair trade practice if the conduct is a violation of
5 antitrust law, to the extent the producer or representative
6 organization is exercising authority pursuant to the
7 provisions of this Act.

8 Section 25. Enforcement.

9 (a) On and after the implementation date of the paint
10 stewardship program, no producer, distributor, or retailer
11 shall sell or offer for sale architectural paint to any person
12 in this State if the producer of the architectural paint is not
13 a member of the representative organization.

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

20 (c) The Attorney General or State's Attorney may request,
21 and the Court may impose, after providing notice and
22 opportunity to be heard, a civil penalty in the amount of \$500
23 a day against any person who violates the terms of this Act.

24 (d) Nothing in this Act prohibits a retailer or distributor

1 from selling their inventory of architectural paint existing on
2 the effective date of this Act.

3 (e) The penalties provided for in this Section may be
4 recovered in a civil action brought in the name of the people
5 of the State of Illinois by the State's Attorney of the county
6 in which the violation occurred or by the Attorney General. Any
7 funds collected under this Section in an action in which the
8 Attorney General has prevailed shall be deposited in the
9 Environmental Protection Trust Fund, to be used in accordance
10 with the provisions of the Environmental Trust Fund Act.

11 Section 30. Consumer education. Producers or the
12 representative organization shall provide consumers with
13 educational materials regarding the paint stewardship
14 assessment and paint stewardship program. Those materials
15 shall include, but not be limited to, information regarding
16 available end-of-life management options for architectural
17 paint offered through the paint stewardship program and
18 information that notifies consumers that a charge for the
19 operation of the paint stewardship program is included in the
20 purchase price of all architectural paint sold in this State.

21 Section 35. Report to the Environmental Protection Agency.
22 On or before October 15, 2016, and annually thereafter, the
23 representative organization shall submit a report to the
24 Director that details the paint stewardship program. The report

1 shall include, but not be limited to: (1) a description of the
2 methods used to collect, transport, and process post-consumer
3 paint in this State; (2) the volume of post-consumer paint
4 collected in this State; (3) the volume and type of
5 post-consumer paint collected in this State by method of
6 disposition, including reuse, recycling, and other methods of
7 processing; (4) the total cost of implementing the program, as
8 determined by an independent financial audit, as performed by
9 the independent auditor; (5) samples of educational materials
10 provided to consumers of architectural paint and an evaluation
11 of the methods used to disseminate those materials; and (6) a
12 list of collection locations. The Agency may post copies of the
13 plan and annual reports on its website.

14 Section 40. Incineration prohibited. No person shall
15 incinerate architectural paint or industrial maintenance
16 coatings in this State after July 1, 2016.

17 Section 99. Effective date. This Act takes effect January
18 1, 2015.