

HOUSE No. 4136

The Commonwealth of Massachusetts

PRESENTED BY:

Patricia A. Haddad

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act Relative to Paint Recycling.

PETITION OF:

NAME:

Patricia A. Haddad

DISTRICT/ADDRESS:

5th Bristol

HOUSE No. 4136

By Mrs. Haddad of Somerset, a petition (subject to Joint Rule 12) of Patricia A. Haddad relative to the recycling of certain paints. Environment, Natural Resources and Agriculture.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act Relative to Paint Recycling.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 21H of the General Laws is hereby amended by adding the
2 following section:-

3 Section 9. (a) As used in this section, the following words shall have the following
4 meanings unless the context clearly requires otherwise:

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6 “Architectural paint”, interior and exterior architectural coatings sold in containers of 5
7 gallons or less; provided, however, that “architectural paint” shall not include industrial, original
8 equipment or specialty coatings.

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10 “Commissioner”, the commissioner of environmental protection.

11

12 “Department”, the department of environmental protection.

13 “Environmentally sound management practices”, procedures for the collection, storage,
14 transportation, reuse, recycling and disposal of architectural paint, to be implemented by the
15 producer or representative organization or by the producers or representative organization’s
16 contracted partners to ensure compliance with all applicable federal, state and local laws and any
17 regulations and ordinances for the protection of human health and the environment and these
18 procedures shall address adequate record keeping, tracking and documenting of the final
19 disposition of materials and adequate environmental liability coverage for professional services
20 and for the operations of the contractors working on behalf of the producer or representative
21 organization.

22 “Postconsumer paint”, architectural paint not used and no longer wanted by a purchaser.

23 “Producer”, a manufacturer of architectural paint who sells, offers for sale or distributes
24 the architectural paint in the commonwealth under the producer’s own name or brand.

25 “Program”, the postconsumer paint collection program established pursuant to subsection
26 (b).

27 “Recycling”, a process by which discarded products, components and by-products are
28 transformed into new usable or marketable materials in a manner in which the original products
29 may lose their identity.

30 “Representative organization”, a nonprofit organization established by a producer to
31 implement the postconsumer paint collection program.

32 “Retailer”, a person that offers architectural paint for sale at retail in the commonwealth.

33 (b)(1) A producer of architectural paint sold at retail in the commonwealth or a
34 representative organization shall submit to the commissioner for the commissioner's approval a
35 plan for the establishment of a postconsumer paint collection program. The program will
36 minimize public sector involvement in the management of postconsumer paint by reducing its
37 generation, promoting its reuse and recycling and negotiating and executing agreements to
38 collect, transport, reuse, recycle and dispose of postconsumer paint using environmentally sound
39 management practices.

40 (2) The plan submitted by the producer or representative organization to the department
41 under this section shall:

42 (i) Provide a list of participating producers and brands covered by the program.

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

45 (iii) Describe how the program will collect, transport, recycle, and process postconsumer
46 paint for end-of-life management, including recycling, energy recovery, and disposal, using
47 environmentally sound management practices.

48 (iv) Describe how it will provide for convenient and cost-effective statewide collection of
49 postconsumer architectural paint in the State. The producer or representative organization may
50 coordinate the program with existing household hazardous waste collection infrastructure as is
51 mutually agreeable. A paint retailer may be authorized by the producer or representative
52 organization as a paint collection site if the paint retailer volunteers to act as such, complies with
53 all applicable laws and regulations, and the retail location is consistent with the maintenance of a
54 cost-effective network of paint collection locations.

55 (v) Provide geographic modeling to determine the number and distribution of sites for
56 collection of postconsumer architectural paint based on the following criteria (A) at least 90
57 percent of Massachusetts residents shall have a collection site within a 15-mile radius; and (B)
58 one additional site will be established for every 50,000 residents of an Urbanized Area (as
59 defined by the U.S. Census Bureau), unless otherwise approved by the commissioner.

60 (vi) Describe how postconsumer paint will be managed in the most environmentally and
61 economically sound manner, including following the waste-management hierarchy. The
62 management of paint under the program shall promote reuse, recycling, energy recovery, and
63 disposal.

64 (vii) Describe education and outreach efforts to inform consumers about the program.
65 These materials should include (A) information about collection opportunities for postconsumer
66 paint; (B) information about the charge for the operation of the program that shall be included in
67 the purchase price of all architectural paint sold in the commonwealth; and (C) efforts to promote
68 the source reduction, reuse, and recycling of architectural paint.

69 (viii) Be reviewed by an independent financial auditor to assure that any added cost to
70 paint sold in the commonwealth as a result of the postconsumer paint collection program does
71 not exceed the costs of the program. The independent auditor shall verify that the amount added
72 to each unit of paint will cover the costs of the postconsumer paint collection program.

73 (3) The independent financial auditor may be selected by the department and the
74 department shall review the work product of the independent auditor. The department may
75 terminate the services of any such independent auditor. The cost of any work performed by such
76 independent auditor shall be funded by the program.

77 (4) Not later than 60 days after submission of the plan under this section, the
78 commissioner shall make a determination, in writing, whether to approve the plan as submitted
79 or disapprove the plan.

80 (5) The department shall enforce the plan and may, by regulation, establish enforcement
81 procedures including the circumstances under which a new plan or an amendment to the plan
82 must be filed by the producer or representative organization.

83 (6) Not later than the implementation date of the program, information regarding the
84 approved plan, the names of participating producers, and the brands of architectural paint
85 covered by the program shall be posted on the department's website and on the website of the
86 representative organization.

87 (c)(1) Upon implementation of the program, each producer shall include in the price of
88 any architectural paint sold to retailers and distributors in the commonwealth the per container
89 amount in the approved program plan. A retailer or distributor shall not deduct this amount from
90 the purchase price.

91
92 (d)(1) A producer or retailer shall not sell, or offer for sale, architectural paint to any
93 person in the commonwealth unless the producer of a paint brand or a producer's representative
94 organization is implementing an approved paint collection program plan as required by
95 subsection (b).

96 (2) A retailer shall be in compliance with this section if, on the date the architectural paint
97 was offered for sale, the producer is listed on the department's website as implementing or

98 participating in an approved program or if the paint brand is listed on the department's website as
99 being included in the program.

100 A paint collection site authorized under the provisions of this section shall not charge any
101 additional amount for the disposal of paint when it is offered for disposal.

102 (3) A manufacturer or the representative organization that organizes the collection,
103 transport and processing of postconsumer paint, in accordance with the postconsumer paint
104 collection program, shall not be liable for any claim of a violation of antitrust, restraint of trade
105 or unfair trade practice arising from conduct undertaken in accordance with the program
106 pursuant to this section.

107 (4) Annually, the producer or representative organization shall submit a report to the
108 commissioner that details the program. The report shall include: (i) a description of the methods
109 used to collect, transport and process postconsumer paint in the commonwealth; (ii) the volume
110 and type of postconsumer paint collected, by method of disposition, including reuse, recycling
111 and other methods of processing; (iii) samples of educational materials provided to consumers of
112 architectural paint; and (iv) the total cost of the program and an independent financial audit. The
113 report or information relating to the report shall be posted on the department's website. The
114 report shall be posted on the website of the representative organization.

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

119 SECTION 2. The plan required by subsection (b) of section 9 of chapter 21H of the
120 General Laws shall be submitted not later than July 1, 2018.

121 SECTION 3. The producer or representative organization shall submit the first annual
122 report detailing the postconsumer paint collection program as required by paragraph (4) of
123 subsection (d) of section 9 of chapter 21H of the General Laws to the commissioner of
124 environmental protection not later than October 15, 2019.

125 SECTION 4. Beginning not later than January 1, 2019 or 6 months after the plan is
126 approved under subsection (b) of section 9 of chapter 21H of the General Laws, whichever
127 occurs later, the representative organization shall implement the postconsumer paint collection
128 program.