

# SENATE BILL NO. 936

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR BERNSKOETTER.

4302S.01H

KRISTINA MARTIN, Secretary

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

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

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

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

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

17 (4) "Conditionally exempt small quantity generator",  
18 the same definition as in 10 CSR 25-4.261(2) (A) and is  
19 equivalent to "very small quantity generator";

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

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

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

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

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

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

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

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

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

46 (11) "Producer", a manufacturer of architectural paint  
47 that sells, offers for sale, or distributes the  
48 architectural paint in this state under the producer's own  
49 name or brand. "Producer" does not include a retailer who  
50 sells, offers for sale, or distributes within or into the

51 state architectural paint manufactured or trademarked by a  
52 person other than the retailer;

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

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

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

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

64 (16) "Very small quantity generator", equivalent to  
65 "conditionally exempt small quantity generator".

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

73 3. (1) A representative organization or a producer of  
74 architectural paint sold at retail in this state that is not  
75 a member of such representative organization shall develop  
76 and submit to the director for the director's approval a  
77 plan for the establishment of a post-consumer paint  
78 collection program. The program shall be structured to:

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

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

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

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

87 (2) The plan submitted under this section shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

149           (3) The independent financial auditor required under  
150 paragraph (g) of subdivision (2) of this subsection shall be  
151 selected by the representative organization after  
152 consultation with the department. The independent financial  
153 auditor shall verify that the cost added to each unit of  
154 paint will cover the costs of the program. The department  
155 shall review the work product of the independent financial  
156 auditor. The cost of any work performed by such independent  
157 financial auditor shall be funded by the paint assessment  
158 fees authorized by the program.

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

171           (5) No later than sixty days after the submission of a  
172 plan under this section, the director shall make a written  
173 determination of whether to approve the plan as submitted or  
174 disapprove the plan. If the director finds the plan does  
175 not meet the requirements of this section, the director  
176 shall provide a written explanation of the nonconforming

177 items. Within sixty days following receipt of the  
178 director's written explanation of items that do not meet the  
179 requirements of this section, the representative  
180 organization or the producer of architectural paint shall  
181 submit a revised plan to the director for approval.

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

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

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

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

203 (10) Nothing in this section shall require a retailer  
204 to track, file, report, submit, or remit a fee assessed  
205 under this section, sales data, or any other information on  
206 behalf of a manufacturer, distributor, or representative  
207 organization. Nothing in this section shall prohibit a

208 manufacturer and a retailer from entering into remitter  
209 agreements.

210         4. (1) The department shall establish an  
211 administrative fee to be paid by each producer or  
212 representative organization submitting a plan under this  
213 section. The department shall set the fee at an amount  
214 that, when paid by every producer or representative  
215 organization that submits a plan, is adequate to reimburse  
216 the department's full costs of administering this section.  
217 The total amount of annual fees collected under this  
218 subdivision shall not exceed the amount necessary to  
219 reimburse costs incurred by the department to administer  
220 this section. The department may consider relevant factors  
221 when establishing the fee including, but not limited to, the  
222 portion of architectural paint sold in the state by the  
223 producer or the members of the representative organization  
224 compared to the total amount of architectural paint sold in  
225 the state by all producers or representative organizations  
226 submitting a plan.

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

237         5. Upon implementation of the program, each producer  
238 shall include in the price of any architectural paint sold  
239 to retailers and distributors in this state the per-



240 container amount, known as the paint assessment fee, in the  
241 approved plan. No retailer or distributor shall deduct such  
242 amount from the purchase price.

243         6. (1) After the program is implemented, no producer  
244 or retailer shall sell or offer for sale architectural paint  
245 to any person in this state unless the producer of a paint  
246 brand or a representative organization is implementing or  
247 participating in the program as required by this section.

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

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

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

264         (5) Before March thirty-first of each year, the  
265 producers or representative organization shall submit an  
266 annual report for the previous year to the director that  
267 details the program. The first report shall be submitted  
268 after the first full year of implementation. The director  
269 may, for good cause shown, extend the deadline for filing  
270 the report. The report or information relating to the  
271 report shall be posted on the department's website and on

272 the website of the representative organization. The report  
273 shall contain at least the following:

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

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

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

282 (d) The total cost of the program; and

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

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

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

296 7. (1) Generators of household wastes and  
297 conditionally exempt small quantity generators may transport  
298 or send architectural paints to a paint collection site to  
299 the extent permitted by a program approved by the director.

300 (2) Paint collection sites may collect and temporarily  
301 store architectural paints generated by entities specified  
302 in subdivision (1) of this subsection in accordance with the

303 requirements of the program in lieu of any otherwise  
304 applicable requirements of state laws or regulations.

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

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

313 8. The director may promulgate all necessary rules and  
314 regulations for the administration of this section. Any  
315 rule or portion of a rule, as that term is defined in  
316 section 536.010, that is created under the authority  
317 delegated in this section shall become effective only if it  
318 complies with and is subject to all of the provisions of  
319 chapter 536 and, if applicable, section 536.028. This  
320 section and chapter 536 are nonseverable and if any of the  
321 powers vested with the general assembly pursuant to chapter  
322 536 to review, to delay the effective date, or to disapprove  
323 and annul a rule are subsequently held unconstitutional,  
324 then the grant of rulemaking authority and any rule proposed  
325 or adopted after August 28, 2024, shall be invalid and void.

✓