

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

PAINT STEWARDSHIP ACT

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Don L. Ipson

Senate Sponsor: _____

LONG TITLE

General Description:

This bill provides for the creation of a statewide paint stewardship program.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ directs the Division of Waste Management and Radiation Control (DWMRC), within the Department of Environmental Quality, to administer the Paint Stewardship Act;
- ▶ requires a producer of architectural paint or a paint stewardship organization to prepare and present for approval to DWMRC a plan for a statewide paint stewardship program (program);
- ▶ describes the program, including certain requirements for producers, distributors, and retailers of architectural paint offered for sale within Utah;
- ▶ prohibits a producer, distributor, or retailer of architectural paint from offering for sale or selling architectural paint in Utah unless the producer, distributor, or retailer participates in the program;
- ▶ requires producers, distributors, and retailers of architectural paint to add a paint stewardship assessment to the cost of architectural paint to fund the program;
- ▶ requires the stewardship organization that DWMRC approves to organize and administer the program and report to DWMRC; and



28 ▶ limits the liability of certain participants in the program.

29 **Money Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **19-1-105**, as last amended by Laws of Utah 2015, Chapter 451

36 ENACTS:

37 **19-6-1301**, Utah Code Annotated 1953

38 **19-6-1302**, Utah Code Annotated 1953

39 **19-6-1303**, Utah Code Annotated 1953

40 **19-6-1304**, Utah Code Annotated 1953

41 **19-6-1305**, Utah Code Annotated 1953

42 **19-6-1306**, Utah Code Annotated 1953

43 **19-6-1307**, Utah Code Annotated 1953



44
45 *Be it enacted by the Legislature of the state of Utah:*

46 Section 1. Section **19-1-105** is amended to read:

47 **19-1-105. Divisions of department -- Control by division directors.**

48 (1) The following divisions are created within the department:

49 (a) the Division of Air Quality, to administer Title 19, Chapter 2, Air Conservation

50 Act;

51 (b) the Division of Drinking Water, to administer Title 19, Chapter 4, Safe Drinking

52 Water Act;

53 (c) the Division of Environmental Response and Remediation, to administer:

54 (i) Title 19, Chapter 6, Part 3, Hazardous Substances Mitigation Act; and

55 (ii) Title 19, Chapter 6, Part 4, Underground Storage Tank Act;

56 (d) the Division of Waste Management and Radiation Control, to administer:

57 (i) Title 19, Chapter 3, Radiation Control Act;

58 (ii) Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act;

- 59 (iii) Title 19, Chapter 6, Part 2, Hazardous Waste Facility Siting Act;
- 60 (iv) Title 19, Chapter 6, Part 5, Solid Waste Management Act;
- 61 (v) Title 19, Chapter 6, Part 6, Lead Acid Battery Disposal;
- 62 (vi) Title 19, Chapter 6, Part 7, Used Oil Management Act;
- 63 (vii) Title 19, Chapter 6, Part 8, Waste Tire Recycling Act;
- 64 (viii) Title 19, Chapter 6, Part 10, Mercury Switch Removal Act;
- 65 (ix) Title 19, Chapter 6, Part 11, Industrial Byproduct Reuse; ~~and~~
- 66 (x) Title 19, Chapter 6, Part 12, Disposal of Electronic Waste Program; and
- 67 (xi) Title 19, Chapter 6, Part 13, Paint Stewardship Act; and
- 68 (e) the Division of Water Quality, to administer Title 19, Chapter 5, Water Quality Act.
- 69 (2) Each division is under the immediate direction and control of a division director
- 70 appointed by the executive director.

71 (3) (a) A division director shall possess the administrative skills and training necessary
 72 to perform the duties of division director.

73 (b) A division director shall hold one of the following degrees from an accredited
 74 college or university:

- 75 (i) a four-year degree in physical or biological science or engineering;
- 76 (ii) a related degree; or
- 77 (iii) a degree in law.

78 (4) The executive director may remove a division director at will.

79 (5) A division director shall serve as the executive secretary to the policymaking board,
 80 created in Section 19-1-106, that has rulemaking authority over the division director's division.

81 Section 2. Section 19-6-1301 is enacted to read:

Part 13. Paint Stewardship Act

19-6-1301. Title.

84 This part is known as the "Paint Stewardship Act."

85 Section 3. Section 19-6-1302 is enacted to read:

19-6-1302. Definitions.

87 As used in this part:

88 (1) "Administering stewardship organization" means the stewardship organization that
 89 the division approves to administer the program under Section 19-6-1303.

90 (2) "Architectural paint" means an interior or exterior architectural coating that is:

91 (a) sold in a container of five gallons or less; and

92 (b) not an industrial, equipment, or specialty coating.

93 (3) "Director" means the director of the division.

94 (4) "Distributor" means a company that has a contractual relationship with one or more
95 producers to market and sell architectural paint to retailers in Utah.

96 (5) "Division" means the Division of Waste Management and Radiation Control,
97 created in Section [19-1-105](#).

98 (6) "Energy recovery" means recovery in which all or a part of the solid waste materials
99 of architectural paint is processed in order to use the heat content or other forms of energy from
100 the solid waste materials.

101 (7) "Environmentally sound management practices" means policies implemented by a
102 producer or a stewardship organization, in accordance with Subsection [19-6-1305](#)(4).

103 (8) "Paint stewardship assessment" means the amount, established under Section
104 [19-6-1304](#), that is:

105 (a) added to the purchase price of architectural paint sold in Utah; and

106 (b) necessary to cover the cost of collecting, transporting, and processing
107 post-consumer architectural paint managed through the program.

108 (9) "Post-consumer paint" means architectural paint not used and no longer wanted by
109 the purchaser of the architectural paint.

110 (10) "Producer" means a manufacturer of architectural paint that sells, offers for sale,
111 or distributes the paint in Utah under the producer's own name or brand.

112 (11) "Program" means the statewide architectural paint stewardship program described
113 in this part.

114 (12) (a) "Recycling" means any process by which discarded products, components, and
115 by-products are transformed into new usable or marketable materials in a manner by which the
116 original products may lose their original composition.

117 (b) "Recycling" does not include energy recovery or energy generation by means of
118 combusting discarded products, components, or by-products of architectural paint or other
119 waste products.

120 (13) "Retailer" means any person in Utah that sells or offers for sale, at retail,

121 architectural paint.

122 (14) "Reuse" means the return of a product into the economic stream for use in the
123 same kind of application as originally intended for the product, without a change in the
124 product's original composition.

125 (15) "Sell" or "sale" means any transfer of ownership for consideration, including
126 remote sales conducted through sales outlets, catalogues, the Internet, or similar electronic
127 means.

128 (16) "Stewardship organization" means a corporation, nonprofit organization, or other
129 legal entity, created by a producer or group of producers to implement the program described in
130 this part.

131 Section 4. Section **19-6-1303** is enacted to read:

132 **19-6-1303. Paint stewardship program.**

133 (1) On or before April 1, 2017, a producer or a stewardship organization shall submit
134 to the director for approval a plan for the establishment of a statewide architectural paint
135 stewardship program.

136 (2) The division shall ensure that the plan described in Subsection (1):

137 (a) provides for convenient and available statewide collection of post-consumer
138 architectural paint in rural and urban areas;

139 (b) identifies each producer participating in the program and the brands of architectural
140 paint sold by each producer in Utah;

141 (c) provides for collection rates and convenience equal to or greater than the collection
142 programs available to consumers before the program's implementation;

143 (d) addresses the reasonably feasible and mutually agreeable coordination of the
144 program with the existing household hazardous waste collection infrastructure;

145 (e) includes a funding mechanism for the program where:

146 (i) each producer, distributor, and retailer participating in the program collects a paint
147 stewardship assessment, described in Section 19-6-1304, for each container of architectural
148 paint the producer, distributor, or retailer sells in Utah; and

149 (ii) each producer participating in the program remits to the administering stewardship
150 organization the funds collected under Subsection (2)(e)(i); and

151 (f) minimizes public sector involvement in the management of post-consumer

152 architectural paint by:

153 (i) reducing the generation of post-consumer architectural paint;

154 (ii) promoting the reuse and recycling of post-consumer architectural paint; and

155 (iii) negotiating and executing agreements to collect, transport, reuse, recycle, burn for
156 energy recovery, and dispose of post-consumer architectural paint using environmentally sound
157 management practices.

158 (3) The division shall list on the division's website the producers described in
159 Subsection (2)(b), including the producers' brands in accordance with Section [19-6-1305](#).

160 Section 5. Section **19-6-1304** is enacted to read:

161 **19-6-1304. Paint stewardship assessment.**

162 (1) (a) The administering stewardship organization shall establish a uniform paint
163 stewardship assessment for all architectural paint sold in Utah, subject to approval by the
164 division, in accordance with Section [63J-1-504](#).

165 (b) The division shall ensure that the paint stewardship assessment established under
166 Subsection (1)(a) is sufficient to recover, but not exceed, the costs of the program.

167 (2) (a) A producer that participates in the program shall remit all funds collected under
168 Subsection (2)(b) to the administering stewardship organization.

169 (b) A producer that participates in the program shall add the paint stewardship
170 assessment, described in Subsection (1), to the cost of all architectural paint sold to retailers
171 and distributors in Utah.

172 (c) A retailer or distributor:

173 (i) shall add the paint stewardship assessment, described in Subsection (1), to the
174 purchase price of all architectural paint sold in Utah; and

175 (ii) may not:

176 (A) describe the paint stewardship assessment as a recycling fee at the point of retail;

177 or

178 (B) charge a fee to the consumer at the point of collection of post-consumer
179 architectural paint.

180 (3) The administering stewardship organization shall:

181 (a) use the funds remitted under Subsection (2)(a) to administer the program; and

182 (b) remit to the division any excess funds not used to administer the program under

183 Subsection (3)(a).

184 Section 6. Section **19-6-1305** is enacted to read:

185 **19-6-1305. Paint stewardship program -- Participation.**

186 (1) Beginning no later than three months after the plan is approved under Section
187 19-6-1303, the administering stewardship organization shall:

188 (a) implement the program; and

189 (b) minimize public sector involvement in the management of post-consumer
190 architectural paint, in accordance with Subsection 19-6-1303(2)(f).

191 (2) (a) Beginning on the day on which the administering stewardship organization
192 approved by the division implements the program, a producer, distributor, or retailer may not
193 sell or offer for sale architectural paint to any person in Utah, unless the producer of the offered
194 architectural paint or paint brand participates in the program.

195 (b) A retailer is in compliance with Subsection (2)(a) if, on the date the retailer orders
196 the architectural paint from the producer or the producer's agent, the division lists on the
197 division's website, as described in Subsection 19-6-1303(3), the producer, along with the
198 producer's product brand that the retailer orders, as participating in the program.

199 (3) At the time of a sale of architectural paint to a consumer, a producer or retailer shall
200 provide the consumer with information on the paint stewardship assessment and the program,
201 including:

202 (a) information regarding available end-of-product-life management options for
203 architectural paint offered through the paint stewardship program;

204 (b) information promoting waste prevention, reuse, and recycling; and

205 (c) a notification to the consumer that funding for the operation of the program is
206 included in the purchase price of all architectural paint sold in Utah.

207 (4) A producer or stewardship organization participating in the program shall
208 implement environmentally sound management practices for the collection, storage,
209 transportation, reuse, recycling, and disposal of architectural paint:

210 (a) that ensure:

211 (i) compliance with all applicable federal, state, and local laws, regulations, and
212 ordinances; and

213 (ii) the protection of human health and the environment; and

- 214 (b) including:
- 215 (i) adequate record keeping, tracking, and documenting of the disposition of materials
- 216 processed under the program; and
- 217 (ii) adequate environmental liability coverage for:
- 218 (A) professional services; and
- 219 (B) the operations of the contractors working on behalf of the producer.

220 Section 7. Section **19-6-1306** is enacted to read:

221 **19-6-1306. Stewardship organization report.**

222 (1) On or before October 15, 2017, and on or before October 15 of each subsequent

223 year, the administering stewardship organization that the division approves to implement the

224 program shall submit a report to the director that details the program, including:

225 (a) a description of the methods used to collect, transport, and process post-consumer

226 paint in Utah;

227 (b) the volume, and type, of post-consumer paint collected in Utah, in sum, and

228 categorized by method of disposition, including reuse, recycling, and other methods;

229 (c) an independent financial audit of the program, funded from the paint stewardship

230 assessment;

231 (d) a description of program costs;

232 (e) an evaluation of the program's funding mechanism;

233 (f) (i) samples of educational materials and information provided to consumers of

234 architectural paint, in accordance with Subsection [19-6-1305\(3\)](#);

235 (ii) an evaluation of the methods used to disseminate consumer educational materials

236 and information; and

237 (iii) an assessment of the effectiveness of consumer education and outreach, including

238 levels of waste prevention and reuse; and

239 (g) an analysis of the environmental costs and benefits of collecting and recycling

240 architectural paint.

241 (2) The director may release a summary form of the data reported to the division under

242 this section, if the summary does not disclose financial, production, or sales data of a producer,

243 retailer, or stewardship organization.

244 Section 8. Section **19-6-1307** is enacted to read:

245 **19-6-1307. Producer and stewardship organization immunity.**

246 A producer participating in the program and the administering stewardship organization
247 are immune from liability for any claim, under state law, of a violation of antitrust, restraint of
248 trade, or unfair trade practice arising from conduct undertaken in accordance with the program.

Legislative Review Note
Office of Legislative Research and General Counsel