



2023 SENATE BILL 1073

February 26, 2024 - Introduced by Senators TOMCZYK, AGARD, COWLES and LARSON, cosponsored by Representatives CONSIDINE, SINICKI, RATCLIFF, JOERS, CONLEY and MOORE OMOKUNDE. Referred to Committee on Labor, Regulatory Reform, Veterans and Military Affairs.

- 1 **AN ACT** *to create* 20.370 (4) (ht) and 287.175 of the statutes; **relating to:**
2 requiring paint manufacturers to administer paint collection programs,
3 granting rule-making authority, and making an appropriation.

Analysis by the Legislative Reference Bureau

This bill requires paint manufacturers (manufacturers) to operate a program to collect used paint. The bill defines “paint” as any kind of architectural paint sold in containers of five gallons or less.

Under the bill, no manufacturer or paint retailer (retailer) may sell paint in this state unless the manufacturer 1) is operating under a paint stewardship plan that has been approved by the Department of Natural Resources; 2) pays an initial fee and an annual fee to DNR; 3) submits annual reports to DNR; and 4) maintains a website with information about brands covered by an approved paint stewardship plan. Under the bill, all of these requirements may be undertaken on behalf of a manufacturer by a paint stewardship organization, which must be a nonprofit organization organized by or made up of one or more manufacturers.

To be approved by DNR, a proposed paint stewardship plan must include specific information, such as a list of all the brands of paint the manufacturer sells in this state; provisions for collecting paint in a cost-effective manner that is convenient to consumers, without charging a fee at the time or place of collection; a goal for the number and geographic distribution of paint collection sites; a process for properly managing collected paint using environmentally sound management practices; a description of an education and outreach program that the manufacturer

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will undertake to inform consumers about paint collection opportunities and to promote the reduction, reuse, and recycling of paint in this state; and a list of exemptions to any existing laws that will be needed to allow for the collection and temporary storage of paint. A manufacturer must also include in its proposed paint stewardship plan the amount of any fee that the manufacturer or a retailer will include in the sales price of any paint to cover the costs of implementing and sustaining the requirements of the bill. Such amount must be reviewed by an independent auditor, selected by the manufacturer in consultation with DNR, to ensure that the proposed fee does not exceed the costs to the manufacturer or retailer to implement and sustain the requirements under the bill.

The bill requires DNR to approve or deny a proposed paint stewardship plan within 60 days of receipt. If DNR denies a proposed plan, the applicant must submit an amended plan within 45 days of the denial. The bill requires paint manufacturers to begin implementing an approved plan within six months of approval.

The bill also requires DNR to maintain a website that lists the names of manufacturers with approved plans and the brands of paint covered by an approved paint stewardship plan and includes copies of all annual reports submitted by manufacturers with approved paint stewardship plans.

Finally, the bill provides that a manufacturer, retailer, or paint stewardship organization is not liable for any claims of a violation of antitrust laws or laws relating to fraudulent, deceptive, or unfair methods of competition or trade practices arising from conduct that complies with an approved paint stewardship plan.

For further information see the state fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.370 (4) (ht) of the statutes is created to read:

2 20.370 (4) (ht) *Paint collection program.* From the environmental fund, a sum
3 sufficient to administer the paint collection program under s. 287.175.

4 **SECTION 2.** 287.175 of the statutes is created to read:

5 **287.175 Paint collection. (1) DEFINITIONS.** In this section:

6 (a) “Collection site” means a location or event at which paint is collected
7 pursuant to a paint stewardship plan approved by the department.

8 (b) “Environmentally sound management practices” means procedures for the
9 collection, storage, transportation, reuse, recycling, energy recovery, and disposal of

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1 paint that comply with all applicable federal, state, and local laws relating to the
2 protection of human health and the environment and that address record keeping,
3 tracking and documenting of the final disposition of materials, and appropriate
4 environmental liability coverage.

5 (c) “Household waste” has the meaning given in s. 289.51 (1) (am).

6 (d) “Paint” means architectural paint for internal or external use sold in
7 containers of 5 gallons or less.

8 (e) “Postconsumer paint” means paint that has not been used and that is no
9 longer wanted by the end consumer that purchased the paint.

10 (f) “Manufacturer” means a person that manufactures paint and that sells,
11 offers for sale, or distributes for sale the paint in or into this state under the
12 manufacturer’s name or brand.

13 (g) “Retailer” means a person that offers paint for sale in this state by any
14 means, including through online sales.

15 **(2) PROHIBITION.** Beginning 12 months after the effective date of this subsection
16 [LRB inserts date], no manufacturer or retailer may sell, offer for sale, or
17 distribute for sale in or into this state any paint unless the manufacturer of the paint
18 is in compliance with the requirements under sub. (3).

19 **(3) REQUIREMENTS.** (a) *Stewardship plan.* No later than 12 months after the
20 effective date of this subsection [LRB inserts date], each manufacturer shall
21 submit a paint stewardship plan to the department for review. The department may
22 grant an extension to this deadline for good cause. A paint stewardship plan
23 submitted to the department shall seek to reduce the generation of postconsumer
24 paint, promote the reuse and recycling of postconsumer paint, manage postconsumer

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1 paint in the waste stream using environmentally sound management practices, and
2 include all of the following:

3 1. If the manufacturer is a member of a paint stewardship organization under
4 sub. (4), the names and contact information for each of the manufacturers in the
5 paint stewardship organization.

6 2. All brands of paint that the manufacturer sells, offers for sale, or distributes
7 for sale in or into this state. All such brands shall be covered by the paint stewardship
8 plan.

9 3. Information about the types of paint covered by the paint stewardship plan,
10 including whether such paints are for interior or exterior use, are water- or
11 oil-based, or are primers, sealers, or wood coatings.

12 4. A cost-effective process for collecting paint throughout this state in a
13 manner that is convenient for consumers, without charging a fee at the time or place
14 of collection. This process may be coordinated with any existing collection
15 infrastructure for household hazardous waste if agreed upon by the entity
16 responsible for that collection.

17 5. A goal for the number and geographic distribution of collection sites. Such
18 a goal shall ensure that at least 90 percent of state residents have access to a
19 collection site within 15 miles of their homes and that there is at least one collection
20 site available for every 50,000 state residents, unless the department approves a
21 different goal. A manufacturer may designate a retailer as a collection site if the
22 retailer consents to act as a collection site and complies with all applicable laws, and
23 if the retailer's location is consistent with the maintenance of a cost-effective
24 network of collection sites.

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1 6. A process for properly managing collected paint using environmentally
2 sound management practices and in an economically sound manner. Such a process
3 shall prioritize the following methods, in the order listed:

4 a. Reuse.

5 b. Recycling.

6 c. Energy recovery.

7 d. Disposal.

8 7. A description of an education and outreach program that the manufacturer
9 will undertake to inform consumers about paint collection opportunities and about
10 the fee included in the sales price of any paint to cover the costs of implementing and
11 sustaining the requirements of this section, and to promote the reduction, reuse, and
12 recycling of postconsumer paint in this state.

13 8. The amount of the fee that the manufacturer, or a retailer of the
14 manufacturer's paint, will include in the sales price of any paint to cover the costs
15 of implementing and sustaining the requirements of this section under par. (f). Such
16 amount shall be reviewed by an independent auditor, selected by the manufacturer
17 in consultation with the department, to ensure that the proposed fee will cover but
18 not exceed the costs to the manufacturer or retailer to implement and sustain the
19 requirements of this section. The department shall review the work product of the
20 independent auditor. The cost of the work performed by an independent auditor
21 shall be paid by the manufacturer.

22 9. Exemptions to any existing laws needed to allow generators of household
23 waste and very small quantity generators, as defined under 40 CFR 260.10, to
24 transport paint to collection sites and to allow collection sites to collect and

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1 temporarily store such paint. The department shall allow such exemptions to the
2 extent that they do not negatively impact human health or the environment.

3 (b) *Implementation.* A manufacturer shall begin implementing an approved
4 paint stewardship plan no later than 6 months after the department approves the
5 plan under sub. (5) (a). The department may grant an extension to this deadline for
6 good cause.

7 (c) *Department fees.* A manufacturer shall pay a fee to the department upon
8 submitting a proposed paint stewardship plan under par. (a), and a manufacturer
9 operating under an approved paint stewardship plan shall pay an annual fee to the
10 department to administer and enforce this section. Fees paid under this paragraph
11 shall be deposited into the environmental fund. The department shall establish a
12 reasonable amount for the fees required under this paragraph, except that the
13 amount of an annual fee for a manufacturer may not exceed 5 percent of the total
14 amount of fees included in the sales price of paint under par. (f) by all manufacturers
15 in this state during the preceding year. Annual fees shall be paid on a date set forth
16 in an approved paint stewardship plan. The department may allow an extension of
17 a payment deadline for good cause.

18 (d) *Reporting.* A manufacturer shall submit an annual report to the
19 department, on a schedule included in the manufacturer's approved paint
20 stewardship plan. The department may extend the deadline for submitting an
21 annual report for good cause. An annual report shall contain all of the following:

22 1. A description of the methods used to collect paint and manage collected paint
23 in the previous year.

24 2. The volume and types of paint collected in the previous year, including a
25 breakdown by the management methods enumerated under par. (a) 6.

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1 3. Samples of educational materials provided to businesses, households, and
2 the public in the previous year.

3 4. The cost of implementing the requirements of this section in the previous
4 year, as supported by an independent financial audit. The independent financial
5 auditor shall be chosen by the manufacturer.

6 (e) *Website*. No later than the implementation date under par. (b), a
7 manufacturer shall maintain on its website all of the following:

8 1. If the manufacturer is a member of a paint stewardship organization under
9 sub. (4), the names of each manufacturer in the paint stewardship organization.

10 2. A list of the brands of paint covered by an approved paint stewardship plan
11 under par. (a) 2.

12 3. Annual reports or information relating to annual reports submitted under
13 par. (d).

14 (f) *Consumer fees*. A manufacturer, or a retailer of the manufacturer's paint,
15 may include a fee in the sales price of any paint to cover the costs of implementing
16 and sustaining the requirements of this section. The amount of such fee shall be the
17 amount in the approved paint stewardship plan under par. (a) 8. A retailer may
18 incorporate the fee as part of the purchase price displayed to consumers or may
19 charge the fee separately to consumers at the time of purchase, but in all cases shall
20 make the fee clear to consumers before purchase.

21 **(4) PAINT STEWARDSHIP ORGANIZATIONS.** A manufacturer may meet the
22 requirements under sub. (3) by participating in a paint stewardship organization
23 that complies with the requirements of sub. (3) on behalf of the manufacturer. A
24 paint stewardship organization shall be a nonprofit organization organized by or
25 made up of one or more manufacturers.

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1 **(5) DEPARTMENT DUTIES.** (a) *Plan approvals.* Within 60 days after receiving a
2 proposed paint stewardship plan under sub. (3) (a), the department shall approve or
3 deny the proposed plan. If the department denies the proposed plan, the person
4 submitting the proposed plan shall submit an amended proposed paint stewardship
5 plan within 45 days after the denial.

6 (b) *Enforcement.* The department shall enforce approved paint stewardship
7 plans and may, by rule, establish enforcement procedures. The department may not
8 promulgate a rule under this paragraph that takes effect earlier than 10 years after
9 the department approves a plan under par. (a).

10 (c) *Website.* 1. Subject to par. (d), the department shall maintain on its website
11 all of the following:

12 a. The names of manufacturers with approved paint stewardship plans.

13 b. A list of the brands of paint listed in approved paint stewardship plans under
14 sub. (3) (a) 2.

15 c. Information regarding the details of each approved paint stewardship plan.

16 d. Annual reports or information relating to annual reports received under sub.

17 (3) (d).

18 2. A retailer shall be deemed to be in compliance of this section if, on the date
19 that the retailer offers paint for sale, the manufacturer of the paint is listed on the
20 department's website under subd. 1. a. or the brand of paint is listed on the
21 department's website under subd. 1. b.

22 (d) *Confidentiality.* Financial, production, or sales data submitted to the
23 department under this section shall be kept confidential and is not open to public
24 inspection and copying under s. 19.35 (1). The department may publish such

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1 information in a summary or aggregated form that does not identify individual
2 manufacturers or retailers.

3 **(6) ANTITRUST AND UNFAIR TRADE PRACTICES.** A manufacturer, retailer, or paint
4 stewardship organization is not liable for any claim of a violation of antitrust laws
5 or laws relating to fraudulent, deceptive, or unfair methods of competition or trade
6 practices arising from conduct that complies with an approved paint stewardship
7 plan under this section.

8 **(END)**