

**ASSEMBLY, No. 1979**

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**STATE OF NEW JERSEY**

**219th LEGISLATURE**

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PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

**Sponsored by:**

**Assemblyman STERLEY S. STANLEY**

**District 18 (Middlesex)**

**Assemblywoman YVONNE LOPEZ**

**District 19 (Middlesex)**

**Assemblyman JAMES J. KENNEDY**

**District 22 (Middlesex, Somerset and Union)**

**Co-Sponsored by:**

**Assemblywoman Murphy, Assemblyman Holley, Assemblywomen Swain, McKnight, Assemblymen Verrelli and Karabinchak**

**SYNOPSIS**

Requires paint producers to implement or participate in paint stewardship program.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



**(Sponsorship Updated As Of: 3/15/2021)**

1 AN ACT requiring producers of architectural paint to implement or  
2 participate in a paint stewardship program, and supplementing  
3 Title 13 of the Revised Statutes.

4  
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
6 *of New Jersey:*

7  
8 1. This act shall be known and may be cited as the  
9 “Architectural Paint Stewardship Act.”

10  
11 2. The Legislature finds and declares that local governments,  
12 businesses, and residents of the State do not have ready access to an  
13 efficient, environmentally sound, and cost-effective disposal  
14 method for architectural paint; and that hazardous waste collection  
15 days are costly for local governments and insufficient,  
16 inconvenient, and too infrequent to properly serve local businesses  
17 and residents, resulting in missed opportunities to reduce, reuse, and  
18 recycle paint.

19 The Legislature further finds and declares that the producers of  
20 architectural paint are best able to assume responsibility for the  
21 development and implementation of a cost-effective paint  
22 stewardship program that will provide fiscal relief to local  
23 governments by reducing the volumes of leftover paint, promoting  
24 its reuse, and providing for the collection, transportation, and  
25 processing of such paint.

26 The Legislature therefore determines that it is in the best  
27 interests of the State for the producers of architectural paint to  
28 provide for the planning and implementation of a program to  
29 collect, reuse, recycle, transport, and dispose of post-consumer  
30 architectural paint.

31  
32 3. As used in this act:

33 “Architectural paint” means interior or exterior architectural  
34 coatings that are sold in containers of five gallons or less.  
35 “Architectural paint” shall not mean industrial, original equipment,  
36 or specialty use coatings.

37 “Commissioner” means the Commissioner of Environmental  
38 Protection.

39 “Department” means the Department of Environmental  
40 Protection.

41 “Distributor” means a person who has a contractual relationship  
42 with one or more producers to market and sell architectural paint to  
43 retailers.

44 “Energy recovery” means a procedure in which all or a part of  
45 the solid waste materials of architectural paint are processed to use  
46 the heat content or other forms of energy from the solid waste  
47 materials.

1 “Environmentally sound management practices” means the  
2 policies or procedures for collection, storage, transportation, reuse,  
3 recycling, and disposal of architectural paint, which are  
4 implemented by a producer, representative organization, or their  
5 contracted partners to ensure compliance with all applicable federal,  
6 State, and local laws, rules, regulations, and ordinances, and the  
7 protection of human health and the environment, and which address  
8 matters such as adequate recordkeeping, accurate tracking and  
9 documentation of the use, reuse, recycling, or disposal of post-  
10 consumer architectural paint within and outside of the State, and  
11 adequate provision of environmental liability coverage for  
12 professional services and for the operations of contractors working  
13 on behalf of a producer or representative organization.

14 “Paint stewardship assessment” means the assessed amount,  
15 established pursuant to section 5 of this act, which is added to the  
16 purchase price of architectural paint sold in the State.

17 “Post-consumer architectural paint” means architectural paint not  
18 used and no longer wanted by a consumer.

19 “Producer” means a manufacturer of architectural paint that is  
20 sold, offered for sale, or distributed in the State, either under the  
21 producer’s own name or under any other brand name.

22 “Recycling” means any process used to transform discarded  
23 products, components, or by-products into new usable or  
24 marketable materials, and which process may cause those discarded  
25 products, components, or by-products to lose their original  
26 composition or identity. “Recycling” shall not include energy  
27 recovery or energy generation by means of combustion or  
28 incineration.

29 “Representative organization” means a nonprofit organization  
30 that is established by, and for the benefit of, two or more  
31 architectural paint producers in the State, and which is tasked with  
32 the development of an architectural paint stewardship program plan,  
33 in accordance with section 4 of this act, and implementation of the  
34 plan on behalf of, and with the participation of, each member  
35 producer.

36 “Retailer” means any person who sells architectural paint or  
37 offers architectural paint for sale at retail to consumers in the State.

38 “Reuse” means the return of a product into the economic stream  
39 for use in the same kind of application originally intended for the  
40 product, without a change in the product’s original composition or  
41 identity.

42 “Sell” or “sale” means any transfer of title for consideration,  
43 including, but not limited to, remote sales transactions conducted  
44 through sales outlets, catalogs, or the Internet, or through any other  
45 similar electronic means.

46  
47 4. a. Within one year after the date of enactment of this act,  
48 every producer of architectural paint, or any representative

1 organization established pursuant to this act, shall prepare and  
2 submit to the commissioner, for the commissioner's approval, a  
3 plan for an architectural paint stewardship program. The plan shall  
4 minimize public sector involvement in the management of post-  
5 consumer architectural paint by reducing its generation, promoting  
6 its reuse and recycling, and negotiating and executing agreements  
7 for its collection, transportation, reuse, recycling, burning for  
8 energy recovery, incineration, and disposal using environmentally  
9 sound management practices.

10 b. The plan submitted pursuant to this section shall:

11 (1) provide for convenient and available Statewide collection of  
12 post-consumer architectural paint from urban, suburban, and rural  
13 areas of the State in a manner that, at a minimum, ensures collection  
14 rates and a level of convenience equal to or greater than that  
15 provided by other collection programs available to consumers prior  
16 to the establishment of the architectural paint stewardship program;

17 (2) provide collection site locations Statewide that will accept  
18 post-consumer architectural paint, through the use of geographic  
19 information modeling, such that at least 90 percent of State  
20 residents have a permanent collection site within 15 miles of their  
21 residence, that permanent collection sites be established for every  
22 30,000 residents of a population center, and that collection sites be  
23 distributed to provide convenient and equitable access for residents  
24 within each population center, unless otherwise authorized by the  
25 department. For those persons who do not have a permanent  
26 collection site within 15 miles of their residence, the plan shall  
27 provide for annual collection events;

28 (3) address, to the extent reasonably feasible and mutually  
29 agreeable, the coordination of the architectural paint stewardship  
30 program with the existing infrastructure of local governments and  
31 the existing household hazardous waste collection infrastructure in  
32 the State;

33 (4) in accordance with the provisions of section 5 of this act,  
34 identify an appropriate amount for the paint stewardship  
35 assessment;

36 (5) identify, in two separate lists: (a) each producer  
37 participating in the program; and (b) the brands of architectural  
38 paint that are included in the program; and

39 (6) be reviewed by an independent financial auditor to verify  
40 that the paint stewardship assessment added to each unit of paint  
41 sold in the State will cover, but not exceed, the costs of the  
42 architectural paint stewardship program. The cost of any work  
43 performed by an independent financial auditor pursuant to this  
44 paragraph shall be funded by the architectural paint stewardship  
45 program.

46 c. A producer of architectural paint, or a representative  
47 organization established pursuant to this act, shall notify the

1 department, in writing, within 30 days of any of the following  
2 changes to a plan approved pursuant to section 6 of this act:

3 (1) the location or number of collection sites identified in the  
4 plan;

5 (2) the identity of the processors that manage the post-consumer  
6 architectural paint collected; or

7 (3) the transporters of the post-consumer architectural paint  
8 collected by the program.

9 d. A producer of architectural paint, or a representative  
10 organization established pursuant to this act, shall submit an  
11 amendment to the plan approved by the department within 120 days  
12 after:

13 (1) any change to the amount of the paint stewardship  
14 assessment imposed pursuant to section 5 of this act; or

15 (2) any change to the goals of the program as approved in the  
16 plan.

17 The department shall review the amendments to the plan and  
18 shall approve or disapprove them in accordance with the procedures  
19 established pursuant to section 6 of this act.

20 e. The department shall charge and collect from each producer  
21 or representative organization that submits a plan for an  
22 architectural paint stewardship program pursuant to this section an  
23 annual administrative fee, which shall not exceed the department's  
24 costs in administering the provisions of this act.

25

26 5. a. The producer or representative organization submitting a  
27 plan pursuant to section 4 of this act shall establish, as a funding  
28 mechanism for the program, a paint stewardship assessment amount  
29 to be uniformly applied to the sale price of all brands of  
30 architectural paint covered under the architectural paint stewardship  
31 program. The paint stewardship assessment shall not exceed the  
32 costs of the architectural paint stewardship program.

33 b. A paint stewardship assessment, as established by subsection  
34 a. of this section, shall be added to the cost of each container of  
35 architectural paint sold by a producer to a retailer or distributor in  
36 the State, and each retailer or distributor shall add the paint  
37 stewardship assessment to the purchase price of the producer's  
38 architectural paint.

39 c. If a producer is a member of a representative organization,  
40 the producer shall remit to the representative organization the paint  
41 stewardship assessment received for each container of architectural  
42 paint sold by the producer in the State.

43

44 6. a. Within 90 days after the department's receipt of a plan  
45 submitted in accordance with section 4 of this act, the commissioner  
46 shall approve or disapprove the plan, including the paint  
47 stewardship assessment identified therein, and provide written  
48 notice of its determination to the producer or representative

1 organization, as the case may be. If the department does not  
2 provide notice of its determination within 90 days after its receipt of  
3 the plan, the plan shall be deemed to have been approved, and the  
4 producer or representative organization, as the case may be, shall  
5 proceed to implement the plan.

6 b. If the commissioner disapproves a plan submitted pursuant  
7 to section 4 of this act, the written notice provided pursuant to  
8 subsection a. of this section shall be accompanied by a detailed  
9 statement, prepared by the department, describing the reasons for  
10 the disapproval, and prescribing the changes required for approval.  
11 No more than 45 days after receipt of the department's written  
12 notice and accompanying statement of the reasons for the  
13 disapproval of a plan submitted pursuant to section 4 of this act, the  
14 producer or representative organization, as appropriate, shall submit  
15 the modified plan to the department for approval.

16 c. Within 45 days after receipt of a modified plan that has been  
17 submitted in accordance with subsection b. of this section, the  
18 department shall approve the plan or reject it, and shall certify the  
19 approval or rejection to the producer or representative organization,  
20 as the case may be. Upon the department's disapproval of any  
21 modified plan submitted pursuant to subsection b. of this section, or  
22 upon the failure of the producer or representative organization to  
23 submit a modified plan as required, the department shall propose  
24 any revisions to the plan the department deems necessary, and shall  
25 transmit the proposed plan revisions to the producer or  
26 representative organization, as the case may be. Upon receipt of the  
27 department's proposed revisions to the plan, the producer or  
28 representative organization, as appropriate, shall implement the  
29 revised plan unless otherwise agreed to by the department.

30 d. Within 90 days after the department's approval of, or  
31 revisions to, a plan submitted in accordance with section 4 of this  
32 act:

33 (1) the producer or representative organization, as appropriate,  
34 shall implement the architectural paint stewardship program  
35 described in the plan; and

36 (2) the department shall post, at a publicly accessible location  
37 on its Internet website, two separate lists respectively identifying  
38 (a) each producer participating in the architectural paint stewardship  
39 program, and (b) the brands of architectural paint included in the  
40 program.

41  
42 7. In implementing a plan approved or revised pursuant to  
43 section 6 of this act, the producer, or representative organization of  
44 which the producer is a member, shall provide consumers with  
45 educational materials related to the architectural paint stewardship  
46 program and the paint stewardship assessment. These educational  
47 materials shall include, but need not be limited to, information  
48 identifying the end-of-life management options that are available

1 for post-consumer architectural paint through the architectural paint  
2 stewardship program, and a notice provision stating that the costs of  
3 program operation will be included in the purchase price of all  
4 architectural paint sold in the State. The producer, or representative  
5 organization of which the producer is a member, may provide  
6 retailers and collection sites with educational and informational  
7 material describing collection opportunities and promoting waste  
8 prevention, reuse, and recycling of post-consumer architectural  
9 paint. The educational and promotional materials may include, but  
10 need not be limited to, signage, written materials, templates of  
11 materials for reproduction by retailers to be provided to consumers  
12 at the time of purchase, and advertising materials describing the  
13 architectural paint stewardship program.

14

15 8. a. A producer, distributor, or retailer shall not sell  
16 architectural paint or offer architectural paint for sale to any person  
17 in the State unless the producer of the architectural paint, or a  
18 representative organization of which the producer is a member, is  
19 engaged in the implementation of, or has fully implemented, a plan  
20 approved or revised by the commissioner pursuant to section 6 of  
21 this act.

22 b. A distributor or retailer shall be deemed to be in compliance  
23 with subsection a. of this section if, on the date architectural paint is  
24 ordered thereby, the producer of the paint and the brand name of the  
25 paint are each identified on the respective lists maintained on the  
26 department's Internet website pursuant to paragraph (2) of  
27 subsection d. of section 6 of this act.

28 c. (1) Any producer, distributor, or retailer who violates the  
29 provisions of subsection a. of this section shall be subject to: (a) a  
30 written warning for a first offense, and (b) a penalty of between  
31 \$500 and \$1,000 for each subsequent offense. Any applicable  
32 penalty under this subsection shall be collected by the State in a  
33 civil action by summary proceeding under the "Penalty  
34 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.),  
35 or in any case before a court of competent jurisdiction wherein  
36 injunctive relief has been requested. The Superior Court and the  
37 municipal court shall have jurisdiction to enforce the provisions of  
38 the "Penalty Enforcement Law of 1999" in accordance with the  
39 provisions of this act.

40 (2) The department may institute a civil action for injunctive  
41 relief to enforce the provisions, or prevent a violation, of this  
42 section, and the court may proceed in the action in a summary  
43 manner.

44

45 9. a. Except as provided in subsection b. of this section, an  
46 action undertaken by a producer or representative organization,  
47 which affects the types or quantities of paint being recycled, or the  
48 cost or structure of any return or recycling program, shall not be

1 deemed to be a violation of any State law relating to antitrust,  
2 restraint of trade, unfair trade practices, or the regulation of trade or  
3 commerce, so long as the action is necessary to plan or implement  
4 the organized collection or processing of architectural paint  
5 pursuant to this act.

6 b. Subsection a. of this section shall not apply to: (1) any  
7 agreement establishing or affecting the price of architectural paint,  
8 except an agreement to establish a paint stewardship assessment, as  
9 authorized by this act; or (2) any agreement restricting the output or  
10 production of architectural paint or the geographic area or  
11 customers to which paint will be sold.

12  
13 10. a. One year after the department provides notification to a  
14 producer or representative organization of its approval of a plan in  
15 accordance with section 6 of this act, and annually thereafter, the  
16 producer or representative organization, as the case may be, shall  
17 submit a report to the department describing its architectural paint  
18 stewardship program. The report shall include, at a minimum:

19 (1) a description of the methods used to reduce, reuse, collect,  
20 transport, recycle, and process post-consumer architectural paint  
21 under the program;

22 (2) the pounds of latex and oil-based post-consumer  
23 architectural paint collected under the program during the preceding  
24 year;

25 (3) the volume of post-consumer architectural paint processed  
26 under the program by method of disposition, including reuse,  
27 recycling, energy recovery, incineration, and disposal in accordance  
28 with environmentally sound management practices;

29 (4) the estimated volume of post-consumer architectural paint  
30 collected at each collection site under the program;

31 (5) a list of all processors of post-consumer architectural paint  
32 from the time of collection to final disposition that are used in the  
33 program and the disposition method used by each processor;

34 (6) a list of all producers participating in the program;

35 (7) the total volume of architectural paint sold in the State  
36 during the preceding year based upon the collection of the paint  
37 stewardship assessment;

38 (8) the total cost of implementing the program, which shall  
39 include separate figures for the cost of collection, transportation,  
40 disposition, communication, and independent financial audit;

41 (9) an evaluation of the effectiveness of the program and any  
42 steps necessary to improve the program; and

43 (10) samples of the educational materials provided to consumers  
44 of architectural paint, together with an evaluation of the methods  
45 used to disseminate those materials, and an assessment of the  
46 educational and outreach effectiveness of those materials.

47 b. Within 90 days after receipt of an annual report, the  
48 department shall meet with interested stakeholders to review it. The

1 department shall post minutes of the stakeholder meeting on its  
2 Internet website within 30 days after the date of the meeting.

3 c. Each report submitted pursuant to subsection a. of this  
4 section shall be posted on the department's Internet website. The  
5 department shall not disclose financial, production, or sales data  
6 reported by a producer or representative organization pursuant to  
7 this section, except that the department may disclose such data in  
8 aggregate or summary format, provided that individual producers,  
9 distributors, or retailers and their financial, production, or sales data  
10 are not specifically identified, and the summary omits any reference  
11 to unique characteristics from which the identities of individual  
12 producers, distributors, or retailers might be inferred or otherwise  
13 ascertained.

14  
15 11. This act shall take effect immediately, except that section 8  
16 of this act shall take effect on the first day of the 18th month after  
17 the date of enactment of this act.

#### 18 19 20 STATEMENT

21  
22 This bill requires every producer of architectural paint sold in the  
23 State to implement, or participate in, a Statewide architectural paint  
24 stewardship program.

25 The bill requires every architectural paint producer, or a  
26 representative organization established on behalf of two or more such  
27 producers, to develop and implement a plan for an architectural paint  
28 stewardship program designed to minimize public sector involvement  
29 in the management of post-consumer architectural paint by reducing  
30 its generation, promoting its reuse and recycling, and negotiating and  
31 executing agreements for its collection, transportation, reuse,  
32 recycling, burning for energy recovery, incineration, and disposal  
33 using environmentally sound management practices.

34 The bill requires any such plan to:

35 (1) provide for convenient and available Statewide collection of  
36 post-consumer architectural paint from urban, suburban, and rural  
37 areas of the State in a manner that, at a minimum, ensures collection  
38 rates and a level of convenience equal to or greater than that provided  
39 by other collection programs available to consumers prior to the  
40 establishment of the architectural paint stewardship program;

41 (2) provide collection site locations Statewide that will accept  
42 post-consumer architectural paint, through the use of geographic  
43 information modeling, such that at least 90 percent of State residents  
44 have a permanent collection site within 15 miles of their residence,  
45 that permanent collection sites be established for every 30,000  
46 residents of a population center, and that collection sites be distributed  
47 to provide convenient and equitable access for residents within each  
48 population center, unless otherwise authorized by the Department of

1 Environmental Protection (DEP). For those persons who do not have a  
2 permanent collection site within 15 miles of their residence, the bill  
3 requires the plan to provide for annual collection events;

4 (3) address, to the extent reasonably feasible and mutually  
5 agreeable, the coordination of the architectural paint stewardship  
6 program with the existing infrastructure of local governments and the  
7 existing household hazardous waste collection infrastructure in the  
8 State;

9 (4) identify an appropriate amount for the paint stewardship  
10 assessment;

11 (5) provide two lists respectively identifying each producer  
12 participating in the architectural paint stewardship program, and the  
13 brands of architectural paint included under the program; and

14 (6) be reviewed by an independent financial auditor to verify that  
15 the amount added to each unit of paint sold in the State will cover, but  
16 not exceed, the costs of the architectural paint stewardship program.

17 Under the bill, a producer or representative organization is also  
18 required to establish, as a funding mechanism for the program, and to  
19 include in the program plan, a paint stewardship assessment amount  
20 that is uniformly applied to the sale price of all brands of architectural  
21 paint covered under the architectural paint stewardship program. The  
22 bill prohibits the assessment amount from exceeding the costs of the  
23 program. Each producer is required to add the paint stewardship  
24 assessment to the cost of each container of architectural paint sold  
25 thereby to a retailer or distributor in the State, and each retailer or  
26 distributor is then required to add the paint stewardship assessment to  
27 the purchase price of the producer's architectural paint. If a producer  
28 is a member of a representative organization, the producer is required  
29 to remit to the representative organization the paint stewardship  
30 assessment received for each container of architectural paint sold by  
31 the producer in the State.

32 The bill requires an architectural paint stewardship program plan to  
33 be submitted to the DEP for approval prior to its implementation by a  
34 paint producer or representative organization. The bill authorizes the  
35 DEP to approve or disapprove of a proposed plan. If the DEP  
36 disapproves of a plan, the bill provides a procedure for subsequent  
37 plan revision by the producer or representative organization, and DEP  
38 review of the revised plan. If the DEP is dissatisfied with a revised  
39 plan, the bill authorizes the DEP, in the interests of expediency, to  
40 propose any modifications or substitutions to the plan's provisions it  
41 deems necessary. The bill requires notice to the DEP if there are any  
42 changes to the location or number of collection sites, the identity of the  
43 processors that manage the post-consumer architectural paint, or the  
44 transporters of the post-consumer architectural paint collected by the  
45 program. An amendment to the plan is required if there is any change  
46 to the amount of the paint stewardship assessment or the goals of the  
47 architectural paint stewardship program.

1       The bill requires a producer or representative organization to  
2       implement the program described in a proposed plan within 90 days  
3       after its approval or modification by the DEP. The producer or  
4       representative organization is further required to submit an annual  
5       report to the DEP, which describes or includes, among other things:  
6       the pounds of post-architectural paint collected in the State; the  
7       methods used to collect, transport, reduce, reuse, recycle, and process  
8       post-consumer architectural paint; a list of all producers participating  
9       in the program; the estimated volume collected at each collection site;  
10      a list of the processors of post-consumer architectural paint and the  
11      disposition method used by each processor; an evaluation of the  
12      effectiveness of the program and any steps necessary to improve the  
13      program; and samples of the educational materials provided to  
14      consumers of architectural paint.

15      The bill prohibits a producer, distributor, or retailer of architectural  
16      paint from selling architectural paint, or offering it for sale, in the State  
17      unless the producer of the paint, or a representative organization of  
18      which the producer is a member, is engaged in the implementation of,  
19      or has fully implemented, an architectural paint stewardship program  
20      plan or revised plan approved by the DEP commissioner. A distributor  
21      or retailer is deemed to be in compliance with this sales prohibition if,  
22      on the date architectural paint is ordered thereby, the producer of the  
23      paint and the brand name of the paint are each identified on the DEP's  
24      Internet website as being included in an architectural paint stewardship  
25      program plan.

26      The bill provides that any producer, distributor, or retailer who  
27      fails to comply with the bill's sales prohibition is subject to a written  
28      warning for a first offense, and a penalty of \$500 to \$1,000 for each  
29      subsequent offense. The bill authorizes the DEP to institute a civil  
30      action for injunctive relief to prevent a continuing violation of this  
31      sales prohibition. However, in order to allow time for the submission,  
32      approval, or modification of the plans required by the bill, the sales  
33      prohibition and penalty provision do not take effect until the first day  
34      of the 18th month following enactment of the bill into law.

35      Finally, the bill specifies that a producer or representative  
36      organization who undertakes an action affecting the types or quantities  
37      of paint being recycled, or the cost or structure of any return or  
38      recycling program, will not be deemed to be in violation of any State  
39      law relating to antitrust, restraint of trade, unfair trade practices, or the  
40      regulation of trade or commerce, so long as the action undertaken is  
41      necessary to plan or implement the organized collection or processing  
42      of architectural paint pursuant to the provisions of the bill. This  
43      protection against antitrust liability is, however, not applicable to: (1)  
44      any agreement establishing or affecting the price of architectural paint,  
45      except an agreement to establish a paint stewardship assessment, as  
46      authorized by the bill; or (2) any agreement restricting the output or  
47      production of architectural paint or the geographic area or customers to  
48      which paint will be sold.