

Amendment to HB 451-FN

1 Amend the bill by replacing all after the enacting clause with the following:

2
3 1 New Subdivision; Paint Product Stewardship Program. Amend RSA 149-M by inserting after
4 section 64 the following new subdivision:

5 Paint Product Stewardship Program

6 149-M:65 Definitions. In this subdivision:

7 I. "Aerosol coating product" means a pressurized coating product containing pigments or
8 resins dispensed by means of a propellant and packaged and sold in a disposable aerosol container
9 for hand-held application, or for use in specialized equipment for ground traffic or marking
10 applications.

11 II. "Architectural paint" means interior and exterior architectural coatings sold in
12 containers of 5 gallons or less.

13 III. "Collection site" means any location or event at which paint is accepted into a
14 postconsumer paint stewardship program pursuant to a postconsumer paint stewardship program
15 plan.

16 IV. "Department" means the department of environmental services.

17 V. "Environmentally sound management practices" means procedures for the collection,
18 storage, transportation, reuse, recycling, energy recovery, and disposal of paint, that comply with all
19 applicable federal, state and local laws, including adequate record keeping, tracking and
20 documenting of the final disposition of materials.

21 VI. "Postconsumer paint" means paint not used and no longer wanted by a purchaser.

22 VII. "Manufacturer" means manufacturer of a paint product who sells, offers for sale or
23 distributes the paint product in the state under the manufacturer's own name or brand.

24 VIII. "Paint or paint product" means architectural paint, aerosol coating products, and
25 additional products as defined in an approved program plan. "Paint" or "Paint product" shall not
26 include industrial or original equipment coatings.

27 IX. "Program" means a postconsumer paint stewardship program established pursuant to
28 RSA 149-M:66.

29 X. "Representative organization" means a nonprofit organization established by a
30 manufacturer to implement a postconsumer paint stewardship program.

31 XI. "Retailer" means a company that offers paint or other allied products for retail sale in
32 the state.

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1 149-M:66 Paint Product Stewardship Program Plan.

2 I. A manufacturer of paint sold at retail in New Hampshire, or representative organization,
3 shall submit to the commissioner a plan for the establishment of a postconsumer paint product
4 stewardship program to cover paint products as defined in RSA 149-M:65. Additional paint products
5 may be proposed in a subsequent program plan in consultation with the department.

6 II. A plan submitted to the department under this section shall:

7 (a) Provide a list of participating manufacturers and brands covered by a program.

8 (b) Provide information on the paint products covered by the program.

9 (c) Describe how paint products covered by a program will be managed using
10 environmentally sound management practices.

11 (d) Describe education and outreach efforts to inform consumers about a program.

12 (e) Describe the assessment added to each unit of paint product sold or transferred for
13 retail sale or to the public in New Hampshire as a result of a program.

14 III. Participation as a collection site is voluntary. A retailer or political subdivision that
15 agrees to comply with any requirements that are consistent with the stewardship plan may request
16 in writing to participate in the stewardship plan as an approved collection site.

17 IV. A manufacturer may, individually or through a stewardship organization, suspend or
18 terminate use of an approved collection site that does not comply with all applicable state, federal, or
19 municipal laws and regulations or adhere to the rules and conditions imposed by the stewardship
20 organization.

21 149-M:67 Plan Submission and Approval.

22 I. A plan required by RSA 149-M:66 shall be submitted within 12 months of the effective
23 date of this subdivision. The department may extend the time for submission of the plan for cause
24 shown. A manufacturer or representative organization may propose an update to an approved
25 program plan by submitting a revised program plan as described in RSA 149-M:66.

26 II. Not later than 90 days after submission of a plan under this section, the department
27 shall approve a plan submitted in accordance with RSA 149-M:66 and send written notification of
28 such approval to the organization that submitted the plan upon determining that the organization
29 submitting the plan fulfilled the requirements of RSA 149-M:66, II.

30 III. If the department does not approve the plan, the department shall provide written
31 notification to the organization that submitted the plan of the reason for the denial. Such denial
32 shall not preclude the organization from submitting an amended plan.

33 149-M:68 Sale of Paint. Upon the date of implementation:

34 I. A manufacturer or retailer shall not sell, or offer for sale, a paint product to any person in
35 New Hampshire unless the manufacturer or manufacturer's representative organization is
36 implementing an approved program plan as required by RSA 149-M:66.

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1 II. A retailer shall be in compliance with this section if, on the date the paint product was
2 offered for sale, the manufacturer is listed on the department's website as implementing or
3 participating in an approved program plan, or if the paint brand is listed on the department's
4 website as being included in the program.

5 III. A paint collection site authorized under the provisions of this section shall not charge
6 any additional amount for the management of paint when it is offered for collection.

7 IV. Each manufacturer, distributor, and retailer shall include the per-container assessment
8 amount set forth in an approved plan in the purchase price of any paint product sold in or into New
9 Hampshire.

10 149-M:69 Annual Report.

11 I. A manufacturer or representative organization implementing an approved program plan
12 under this subdivision shall submit a report annually to the commissioner that details the program
13 in accordance with the program plan requirements.

14 II. The first annual report shall be due 120 days after completion of the first year of program
15 implementation, and in no case later than 18 months from the date the plan was approved.
16 Thereafter, annual reports shall be submitted within 120 days after the end of each calendar year.

17 149-M:70 Liability and Disclosure.

18 I. A manufacturer or representative organization implementing or participating in a
19 program shall be exempt from RSA 356 with respect to any claim of a violation of antitrust, restraint
20 of trade, unfair trade practice, or other anticompetitive conduct arising from conduct undertaken in
21 accordance with a program.

22 II. Financial, production or sales data reported to the department by a manufacturer or by
23 the representative organization is not a public record pursuant to RSA 91-A:5, IV and rules adopted
24 by the department pursuant thereto and shall not be subject to public inspection or disclosure. The
25 commissioner may release a summary form of such data that does not disclose financial, production
26 or sales data of the manufacturer, retailer or representative organization.

27 149-M:71 Administrative Reimbursement.

28 I. Manufacturers and stewardship organizations shall collectively pay the department's
29 reasonably incurred administrative costs related to implementing this chapter. The timing and
30 amount of administrative payments shall be determined in consultation with the department.

31 II. No later than 90 days before a stewardship plan is required to be submitted to the
32 department, the department shall notify each manufacturer acting individually and each
33 representative organization of its reasonably incurred administrative costs related to implementing
34 this chapter. This shall include reasonable actual costs associated with rulemaking and other
35 startup activities before the stewardship plan is submitted and approved.

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1 149-M:72 Implementation. A program plan shall be implemented within 6 months of the date of
2 approval by the department. The department may extend the date of implementation for good cause
3 shown. The department may adopt rules under RSA 541-A to implement the program.

4 149-M:73 Postconsumer Paint from Households and Small Businesses.

5 I. Postconsumer paint that is otherwise defined as hazardous waste by RSA 147-A and rules
6 adopted by the department pursuant thereto, and that is received at a collection site, shall be
7 managed as universal waste in accordance with rules established by the department.

8 II. Any person who agrees to operate a collection point and who responsibly implements
9 environmentally-sound management practices in good faith shall not be subject to penalties for the
10 acceptance or storage of, or for any spill, leak, or discharge of collected paint, or other materials that
11 are inadvertently accepted pursuant to the program, and which occurs despite the implementation of
12 such practices.

13 III. Nothing in this section shall be construed as restricting the collection of postconsumer
14 paint by a stewardship program where such collection is authorized under any other laws or
15 regulations.

16 IV. Nothing in this section shall be construed to affect any requirements applicable to
17 facilities that treat, dispose of, or recycle postconsumer paint products under an otherwise applicable
18 law, rule or regulation.

19 2 Effective Date. This act shall take effect upon its passage.