A BILL

For an Act Relating to Paints and Varnishes and the Distribution and Sale of Same, and Repealing Statutes Section , etc.

Be it enacted by the Legislature of the State of

Section 1. This act shall be known and may be cited as the Paint Act.

Section 2. Subdivision 1. Unless the language or content clearly indicates that a different meaning is intended, the following words, terms and phrases shall, for the purposes of this act, be given the meanings subjoined to them.

Subdivision 2. The term "paint" means any substances or mixture of substances, liquid, powder or paste, intended for use as a protective or decorative coating on buildings, fences, or structures. It shall not include artist colors, waxes, wood fillers, polishes, stains, plaster, stucco, water-proofing compounds and varnishes.

Subdivision 3. The term "turpentine" means gum spirits of turpentine, steam distilled wood turpentine, sulfate wood turpentine and destructively distilled wood turpentine, in accordance with standards and regulations promulgated under the federal "Naval Stores Act."

Subdivision 4. The term "paint oil" means any oil, or mixture of oils and other liquids used or intended for use in paint.

Subdivision 5. The term "person" shall include any individual, firm, corporation, partnership, association, trust, joint stock company or unincorporated organization.

Subdivision 6. The term "Commissioner" as used in this Act shall mean Commissioner of the Department of of the State of

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Subdivision 7. The term "label" means the written, printed, or graphic matter on the immediate container of the article or on the article itself and also on the outside container or wrapper, if any there be, of the individual consumer package of such article. The label shall contain the following information: (1) the name, brand or trade-mark of the product; (2) the name and address of the manufacturer, distributor, or person responsible for putting the product on the market; (3) the net weight or measure, as the case may be, of the contents of the package; (4) a complete ingredient statement as outlined in Section 2, Subdivision 9 on all packages containing one quart or more.

Subdivision 8. The term "misbranded" shall apply to any paint, paint oil or turpentine if its label or any matter accompanying or pertaining thereto bears any statement, design or graphic representation relative to the article or its ingredients which is false or misleading in any particular, or if it be an imitation of or offered for sale under the name of another article; and to any paint if its label fails to bear the ingredient statement plainly and correctly on the principal panel of the individual container and on the carton or outer container if there be one, or if the label does not specify the purpose for which the paint is intended, or contain adequate directions for use. The term "misbranded" shall also apply to any paint, paint oil or turpentine if any information required by or under the authority of this chapter to appear on the label is not conspicuously placed thereon clearly and distinctly and in the English language.

Subdivision 9. The term "ingredient statement" shall mean a statement of the chemical name and percentage by weight of each ingredient, provided that whenever it is not possible or practical to use the chemical name, the Commissioner may approve the use of other names or terms in the ingredient statement, and provided further that in the case of paint containing

5 percent or less tinting colors such tinting colors need not be declared on the label. The ingredient statement may vary from the contents of the package in an amount not to exceed the cube root of the declared percentage by volume of each ingredient.

Section 3. Determination; Rules and Regulations; Uniformity. —

(1) The Commissioner is authorized to effect the collection and examination of samples of paint, paint oil or turpentine to determine compliance with the requirements of this chapter; and he shall have the authority at all reasonable hours to enter into any car, warehouse, store, building, boat, vessel or place supposed to contain paint, paint oil or turpentine, for the purposes of inspection or sampling and to procure samples for analysis or examination from any lot, package or parcel of paint, paint oil or turpentine; and

(2) The Commissioner is authorized to prescribe, after public hearing following due public notice and notice to the National, Paint, Varnish & Lacquer Association, such rules and regulations relating to the sale and distribution of paint, paint oil or turpentine as he may find necessary and proper in his judgment to best carry out the purpose of this chapter. It is desirable that such rules and regulations should be in harmony or not in conflict with other states having similar laws.

(3) The Commissioner is further authorized to suspend temporarily, in whole or in part, and on such conditions as may be deemed appropriate, the provisions herein requiring an ingredient statement when shortages of any materials used in the manufacture of paint result from official action, state or federal, based on a public emergency relating to defense or security declared by the Governor of this state or by the President or the Congress of the United States.

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(4) In order to avoid confusion resulting from diverse requirements, particularly as to labeling of paint, paint oil or turpentine, and to avoid increased costs to the people of the State due to the necessity of complying with diverse requirements in the manufacture and sale of paint, paint oil or turpentine, the Commissioner is authorized and empowered to cooperate with any other agency of this State or other States or agencies of the United States, for the purpose of carrying out the provisions of this chapter.

Section 4. Violations. If it shall appear from the examination or evidence that any of the provisions of this chapter or the Rules and Regulations issued thereunder have been violated, the Commissioner may cause notice of such violations to be given to the manufacturer, distributor, or possessor from whom said sample or evidence was taken. Any party so notified shall be given an opportunity to be heard under such rules and regulations as may be prescribed by the Commissioner. If it appears after such hearing that there has been a sufficient number of violations of this chapter or the Rules and Regulations issued thereunder, the Commissioner may certify the facts to the proper prosecuting attorney and furnish that officer with a copy of the results of the examination of such sample duly authenticated by the analyst or other officer making the examination under the oath of such analyst or officer. It shall be the duty of every attorney for the State to whom the Commissioner shall report any violation of this chapter to cause proceedings to be prosecuted without delay for the fines and penalties in such cases. Any person convicted of violating any provision of this chapter or the Rules and Regulations issued thereunder shall be adjudged guilty of a misdemeanor and shall be punished in the discretion of the court.

Nothing in this section shall be construed as requiring the Commissioner to report for the institution of proceedings under this chapter, minor violations of this chapter, whenever the Commissioner believes that the

public interest will be adequately served in the circumstances by a suitable written notice of warning.

Section 5. Exemptions. — The penalties provided for violations of Section _____ of this chapter shall not apply to:

(1) Any carrier while lawfully engaged in transporting a paint, paint oil or turpentine within this State, if such carrier shall, upon request, permit the Commissioner or his designated agent to copy all records showing the transaction in and movements of the articles;

(2) Public officials of this State and the Federal Government engaged in the performance of their official duties;

(3) Any person who shall sell paint through agreement to any manufacturer, industrial plant, or agents of the Federal Government, State of _____ or subdivisions thereof or public service corporation for direct use; Provided,

(a) That evidence concerning such sales is furnished the Commissioner upon request; and

(b) That the paint is not exposed for sale, offered for sale or sold to the general public.

(4) Any person who establishes a guaranty signed by, and containing the name and address of,the manufacturer or person residing in the United States from whom he purchased and received in good faith the paint in the same unbroken package, to the effect that the paint was lawfully labeled at the time of sale and delivery to him, and that it complies with the other requirements of this chapter, designating this chapter. In such case the guarantor shall be subject to the penalties which would otherwise attach to the person holding the guaranty under the provisions of this chapter.

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Section 6. It shall be unlawful for any person to sell, offer or expose for sale or to have in his possession with intent to sell within this state any paint, paint oil, or turpentine, of whatever nature, that is adulterated, misbranded, or insufficiently or improperly labeled within the meaning of this act or the rules or regulations adopted by the Commissioner.

Section 7. "Stop Sale" Orders. — It shall be the duty of the Commissioner to issue and enforce a written or printed "Stop-sale use or removal" order to the owner or custodian of any lot of paint, paint oil or turpentine and to hold at a designated place when the Commissioner finds said paint, paint oil or turpentine is being offered or exposed for sale in violation of any of the provisions of this chapter until this chapter has been complied with and said paint, paint oil or turpentine is released in writing by the Commissioner or said violation has been otherwise legally disposed of by written authority; provided that the owner or custodian of such paint, paint oil or turpentine shall have the right to appeal from such order to a court of competent jurisdiction in the county or city where the said paint, paint oil or turpentine is found, praying for a judgment as to the justification of said order, and for the discharge of such paint, paint oil or turpentine from the order prohibiting the sale in accordance with the findings of the court; and provided further that the provisions of this section shall not be construed as limiting the right of the enforcement officer to proceed as authorized by other provisions of this chapter. The Commissioner shall release the paint, paint oil or turpentine so withdrawn when the requirements of the provisions of this chapter have been complied with and upon payment of all costs and expenses incurred in connection with the withdrawal.

Section 8. Seizure, Condemnation, and Sale. — Any lot of paint, paint oil or turpentine not in compliance with the provisions of this chapter shall be subject to seizure on complaint of the Commissioner to a court of competent

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jurisdiction in the area in which said paint, paint oil or turpentine is located. In the event the court finds the said paint, paint oil or turpentine to be in violation of this chapter and orders the condemnation of said paint, paint oil or turpentine, it shall be disposed of in any manner consistent with the quality of the paint, paint oil or turpentine and the laws of the State: Provided, that in no instance shall the disposition of said paint, paint oil or turpentine be ordered by the court without first giving the claimant an opportunity to apply to the court for the release of said paint, paint oil or turpentine or for permission to process or relabel said product to bring it into compliance with this chapter.

Section 9. Delegation of Duties. — All authority vested in the Commissioner by virtue of the provisions of this chapter may with like force and effect be executed by such employees of the Department of _____ as the Commissioner may from time to time delegate for said purpose.

Section 10. Separability. — If any provision of this chapter is declared unconstitutional or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of this chapter and the applicability thereof to other persons and circumstances shall not be affected thereby.

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