

Senate Bill 791

Sponsored by Senator HASS; Senator BATES, Representative GILLIAM

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Repeals sunset on architectural paint stewardship program. Modifies provisions related to architectural paint stewardship program participation.

Increases fees paid by architectural paint stewardship program participants.

Establishes civil penalties for violations of certain provisions related to architectural paint stewardship program.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to paint stewardship; creating new provisions; amending ORS 459.995 and sections 1, 2, 3, 4, 5, 6, 7 and 9, chapter 777, Oregon Laws 2009; repealing sections 13 and 14, chapter 777, Oregon Laws 2009; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

ARCHITECTURAL PAINT STEWARDSHIP PROGRAM

SECTION 1. Section 1, chapter 777, Oregon Laws 2009, is amended to read:

Sec. 1. The Legislative Assembly finds that it is in the best interest of this state for architectural paint manufacturers to finance and manage an environmentally sound, cost-effective architectural paint stewardship [*pilot*] program, undertaking responsibility for the development and implementation of strategies to reduce the generation of post-consumer architectural paint, promote the reuse of post-consumer architectural paint and collect, transport and process post-consumer architectural paint for end-of-product-life management, including reuse, recycling, energy recovery and disposal.

SECTION 2. Section 2, chapter 777, Oregon Laws 2009, is amended to read:

Sec. 2. As used in sections 1 to 10, **chapter 777, Oregon Laws 2009** [*of this 2009 Act*]:

(1)(a) "Architectural paint" means interior and exterior architectural coatings sold in containers, **including aerosol containers**, of [*five*] **six** gallons or less.

(b) "Architectural paint" does not mean industrial, original equipment or specialty coatings.

(2) "Architectural paint stewardship assessment" means the amount added to the purchase price of architectural paint sold in this state [*necessary*] to cover the cost of collecting, transporting and processing the post-consumer architectural paint managed through a statewide architectural paint stewardship [*pilot*] program.

(3) "Distributor" means a company that has a contractual relationship with one or more producers to market and sell architectural paint to retailers in this state.

(4) "Energy recovery" means recovery in which all or a part of the solid waste materials of architectural paint are processed to use the heat content or other forms of energy from the solid

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 waste materials.

2 (5) "Post-consumer architectural paint" means architectural paint not used and no longer
3 wanted by its purchaser.

4 (6) "Producer" means a person that manufactures architectural paint that is sold or offered for
5 sale in this state.

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

9 (b) "Recycling" does not include energy recovery or energy generation by means of combusting
10 discarded products, components and by-products with or without other waste products from post-
11 consumer architectural paint.

12 (8) "Retailer" means any person that sells or offers for sale architectural paint at retail in this
13 state.

14 (9) "Reuse" means the return of a product into the economic stream for use in the same kind
15 of application intended for the use of the product, without a change in the product's original com-
16 position **or packaging**.

17 (10) "Sell" or "sale" means any transfer of title for consideration, including remote sales con-
18 ducted through sales outlets, catalogs or the Internet or through any other similar electronic means.

19 (11) "Sound management practices" means policies to be implemented by a producer or a
20 stewardship organization to ensure compliance with all applicable laws and that address:

21 (a) Adequate record keeping;

22 (b) The tracking and documentation of the use, reuse or disposal of post-consumer architectural
23 paint within this state and outside this state; and

24 (c) Adequate environmental liability coverage for professional services and for the operations
25 of contractors working for producers or a stewardship organization.

26 (12) "Stewardship organization" means a corporation, nonprofit organization or other legal en-
27 tity created by a producer or group of producers to implement the architectural paint stewardship
28 [*pilot*] program described in sections 1 to 10 [*of this 2009 Act*], **chapter 777, Oregon Laws 2009**.

29 **SECTION 3.** Section 3, chapter 777, Oregon Laws 2009, is amended to read:

30 **Sec. 3.** (1) A producer or retailer may not sell or offer for sale architectural paint to any person
31 in this state unless the producer is participating in [*a*] **an approved** statewide architectural paint
32 stewardship [*pilot*] program organized by a stewardship organization. A retailer is in compliance
33 with this [*section*] **subsection** if, on the date the architectural paint was ordered from the producer
34 or its agent, the website maintained by the Department of Environmental Quality lists the producer,
35 along with the producer's product brand, as participating in an **approved** architectural paint
36 stewardship [*pilot*] program.

37 **(2) The stewardship organization must establish goals to:**

38 **(a) Reduce the amount of post-consumer architectural paint generated in this state.**

39 **(b) Provide for the convenient statewide collection of post-consumer architectural paint.**

40 **(c) Collect and ensure the proper management of post-consumer architectural paint, in-**
41 **cluding the reuse, recovery and recycling of post-consumer architectural paint.**

42 [(2)] **(3)(a)** [*At the time of sale to a consumer, a producer or retailer*] **A stewardship organization**
43 **must provide retailers** selling or offering for sale architectural paint [*must provide the consumer*]
44 with information on available [*end-of-product-life management options*] **collection opportunities for**
45 **post-consumer architectural paint** offered through [*an*] **the organization's** architectural paint

1 stewardship [*pilot*] program.

2 **(b) A retailer that sells or offers for sale architectural paint must provide the informa-**
 3 **tion described in paragraph (a) of this subsection to a consumer at the time of sale.**

4 **SECTION 4.** Section 4, chapter 777, Oregon Laws 2009, is amended to read:

5 **Sec. 4.** (1) [*No later than March 1, 2010,*] A stewardship organization must submit a plan for a
 6 statewide architectural paint stewardship [*pilot*] program to the Director of the Department of En-
 7 vironmental Quality for approval. **The plan must address the requirements set forth in sub-**
 8 **sections (2) and (3) of this section.**

9 (2) The plan must **use geographic information modeling to determine the number and dis-**
 10 **tribution of collection sites based on the following criteria:**

11 [*(a) Provide for convenient and available statewide collection of post-consumer architectural paint*
 12 *in urban and rural areas of this state;*]

13 **(a) At least 90 percent of Oregon residents must have a permanent collection site within**
 14 **a 15-mile radius of the residence of each person.**

15 **(b) One additional permanent site must be established for every 30,000 residents of a**
 16 **population center distributed to provide convenient and reasonably equitable access for res-**
 17 **idents within each population center, unless otherwise approved by the Department of Envi-**
 18 **ronmental Quality.**

19 **(c) For the portion of the population that does not have a permanent collection location**
 20 **within a 15-mile radius of the residence of each person, the plan must provide collection**
 21 **events at least once a year.**

22 **(3) In addition to the requirements specified in subsection (2) of this section, the plan**
 23 **must also:**

24 [*(b) (a) Identify each producer participating in the program [and the brands of architectural*
 25 *paint sold by each producer; and].*

26 **(b) Identify each brand of architectural paint sold in this state by the producers partic-**
 27 **ipating in the program.**

28 **(c) Identify the processors that manage the post-consumer architectural paint collected**
 29 **by the stewardship organization under the program.**

30 [*(c) (d) Include a funding mechanism whereby each architectural paint producer remits to the*
 31 *stewardship organization payment of an architectural paint stewardship assessment for each con-*
 32 *tainer of architectural paint the producer sells in this state. The architectural paint stewardship*
 33 *assessment must be added to the cost of all architectural paint sold to Oregon retailers and dis-*
 34 *tributors, and each Oregon retailer or distributor shall add the assessment to the purchase price of*
 35 *all architectural paint sold in this state. The architectural paint stewardship assessment may not*
 36 *be described as an Oregon recycling fee at the point of retail, and a fee may not be charged to the*
 37 *consumer at the point of collection of post-consumer architectural paint. To ensure that the funding*
 38 *mechanism is equitable and sustainable, a uniform architectural paint stewardship assessment must*
 39 *be established for all architectural paint sold in this state. The architectural paint stewardship as-*
 40 *essment must be approved by the director as part of the plan and must be sufficient to recover, but*
 41 *not exceed, the costs of the architectural paint stewardship [*pilot*] program.*

42 [*(3) Beginning no later than July 1, 2010, or two months after the plan is approved under sub-*
 43 *section (1) of this section, whichever occurs first, the stewardship organization must:]*

44 [*(a) Implement an architectural paint stewardship pilot program described in the plan;*]

45 [*(b) Provide for the development and implementation of strategies to reduce the generation of post-*

1 *consumer architectural paint; and]*

2 *[(c) Promote the reuse of post-consumer architectural paint and undertake the responsibility of ne-*
 3 *gotiating and executing contracts to collect, transport, recycle and process post-consumer architectural*
 4 *paint for end-of-product-life management that includes recycling, energy recovery and disposal using*
 5 *sound management practices.]*

6 *[(4) A stewardship organization shall promote the architectural paint stewardship pilot program*
 7 *and provide consumers with educational materials describing collection opportunities for post-consumer*
 8 *architectural paint and information promoting waste prevention, reuse and recycling. The educational*
 9 *materials must also make consumers aware that funding for the operation of the architectural paint*
 10 *stewardship pilot program has been added to the purchase price of all architectural paint sold in this*
 11 *state.]*

12 **(4) As part of its approval of any plan under this subsection, the director may require a**
 13 **stewardship organization to contract with a local government, as defined in ORS 174.116, to**
 14 **provide collection sites for post-consumer architectural paint if the requirements specified**
 15 **in subsections (2) and (3) of this section have not been met by the stewardship organization.**

16 **(5)(a) At least once every four years from the date the director approves a plan, a**
 17 **stewardship organization must submit an updated plan to the director that specifies any**
 18 **changes regarding how the stewardship organization meets the requirements specified in**
 19 **subsections (2) and (3) of this section.**

20 **(b) In addition to the requirement specified in paragraph (a) of this subsection, a**
 21 **stewardship organization must notify the director within 30 days in writing of any change**
 22 **to:**

23 **(A) The number of collection sites for post-consumer architectural paint identified under**
 24 **this section as part of the plan.**

25 **(B) The producers identified under this section as part of the plan.**

26 **(C) The brands of architectural paint identified under this section as part of the plan.**

27 **(D) The processors that manage post-consumer architectural paint identified under this**
 28 **section as part of the plan.**

29 **SECTION 5. (1) The first plans for statewide architectural paint stewardship programs**
 30 **under section 4, chapter 777, Oregon Laws 2009, as amended by section 4 of this 2013 Act,**
 31 **must be submitted to the Director of the Department of Environmental Quality not later**
 32 **than January 1, 2014.**

33 **(2) A stewardship organization that submitted a plan for a statewide architectural paint**
 34 **stewardship program to the director before the effective date of this 2013 Act, or that had**
 35 **a plan approved by the director before the effective date of this 2013 Act, must submit a plan**
 36 **under section 4, chapter 777, Oregon Laws 2009, as amended by section 4 of this 2013 Act, to**
 37 **the director not later than January 1, 2014.**

38 **SECTION 6. Section 6, chapter 777, Oregon Laws 2009, is amended to read:**

39 **Sec. 6.** No later than [*September 1, 2011, and by September 1 of each subsequent*] **October 1 of**
 40 **each** year, a stewardship organization must submit a report to the Director of the Department of
 41 Environmental Quality describing the architectural paint stewardship [*pilot*] program approved by
 42 the director under section 4 [*of this 2009 Act*], **chapter 777, Oregon Laws 2009.** At a minimum, the
 43 report must contain:

44 **(1) A description of the activities undertaken to achieve, and progress made toward**
 45 **achieving, the goals described in section 3, chapter 777, Oregon Laws 2009;**

1 [(1) (2) A description of the methods used to collect, transport, recycle, *[and]* process **and account for** post-consumer architectural paint in this state;

2
3 [(2) (3) The volume and type of post-consumer architectural paint collected in *[all regions of]*
4 **each county and at each collection site in** this state;

5 [(3) (4) The volume of post-consumer architectural paint collected in this state by *[method of]*
6 **final disposition, including reuse, recycling, energy recovery, *[and]* disposal and other processing**
7 **of architectural paint;**

8 [(4) (5) An independent financial audit of the program;

9 [(5) (6) A **summary** description of program **revenue and costs***[:]*, **including:**

10 (a) **The total cost of the architectural paint stewardship program;**

11 (b) **The per capita cost of the architectural paint stewardship program;**

12 (c) **The cost per gallon of architectural paint collected in the architectural paint**
13 **stewardship program;**

14 (d) **The total revenue of the architectural paint stewardship program; and**

15 (e) **How the architectural paint stewardship program uses any revenue that exceeds the**
16 **total cost of the architectural paint stewardship program;**

17 (7) **A detailed description of the following costs of the architectural paint stewardship**
18 **program:**

19 (a) **Program delivery, including education and outreach, collection, architectural paint**
20 **exchange incentives, transportation, processing and labor; and**

21 (b) **Administration costs;**

22 [(6) (8) An evaluation of the operation of the program's funding mechanism; **and**

23 [(7) (9) Samples of educational materials provided to consumers of architectural paint.*[, an*
24 *evaluation of the methods used to disseminate those materials and an assessment of the effectiveness*
25 *of the education and outreach, including levels of waste prevention and reuse; and]*

26 [(8) *An analysis of the environmental costs and benefits of collecting and recycling latex paint.*]

27 **SECTION 7.** Section 9, chapter 777, Oregon Laws 2009, is amended to read:

28 **Sec. 9.** (1) The Department of Environmental Quality shall charge the following fees to be paid
29 by a stewardship organization for administering sections 1 to 10 *[of this 2009 Act]*, **chapter 777,**
30 **Oregon Laws 2009:**

31 (a) *[\$10,000]* **\$20,000** when the plan **or updated plan** specified in section 4 *[of this 2009 Act]*,
32 **chapter 777, Oregon Laws 2009**, is submitted to the *[department]* **Director of the Department of**
33 **Environmental Quality;** and

34 (b) *[\$10,000]* **\$30,000** each year thereafter for administrative costs related to the architectural
35 paint stewardship *[pilot]* program.

36 [(2) *The department may establish a schedule of fees in lieu of the fees specified in subsection (1)*
37 *of this section that is based on an average of the results of the financial audits described in section 6*
38 *of this 2009 Act and that do not exceed 0.05 percent of the average architectural paint stewardship pilot*
39 *program costs reported in the financial audits.*]

40 [(3) (2) Fees collected by the department under this section shall be deposited in the Product
41 Stewardship Fund established under section 10 *[of this 2009 Act]*, **chapter 777, Oregon Laws 2009.**

42 **SECTION 8.** Section 5, chapter 777, Oregon Laws 2009, is amended to read:

43 **Sec. 5.** (1) It is the intent of this section that a stewardship organization operating an archi-
44 tectural paint stewardship *[pilot]* program pursuant to sections 1 to 10, **chapter 777, Oregon Laws**
45 **2009** *[of this 2009 Act]*, approved by the Department of Environmental Quality and subject to the

1 regulatory supervision of the department, is granted immunity from federal and state antitrust laws
 2 for the limited purpose of establishing and operating an architectural paint stewardship [*pilot*] pro-
 3 gram. The activities of the stewardship organization that comply with the provisions of this section
 4 may not be considered to be in restraint of trade, a conspiracy or combination or any other unlawful
 5 activity in violation of any provisions of ORS 646.705 to 646.826 or federal antitrust laws.

6 (2) The department shall actively supervise the conduct of the stewardship organization, in-
 7 cluding but not limited to conduct related to payments made by architectural paint producers to the
 8 stewardship organization for the architectural paint stewardship assessment specified in section 4,
 9 **chapter 777, Oregon Laws 2009** [*of this 2009 Act*]. The department may require the stewardship
 10 organization to take whatever action the department considers necessary to:

11 (a) Ensure that the stewardship organization is engaging in conduct authorized under this sec-
 12 tion;

13 (b) Ensure that the policies of this state are being fulfilled by an architectural paint stewardship
 14 [*pilot*] program; and

15 (c) Enjoin conduct that is not authorized by the department or conduct that the department finds
 16 does not advance the interests of this state in carrying out the architectural paint stewardship
 17 [*pilot*] program.

18 (3) The Director of the Department of Environmental Quality may designate employees of the
 19 department to carry out the responsibility of actively supervising the conduct of the stewardship
 20 organization.

21 (4) The Environmental Quality Commission may adopt rules to carry out the purposes of this
 22 section.

23 **SECTION 9.** Section 7, chapter 777, Oregon Laws 2009, as amended by section 1, chapter 146,
 24 Oregon Laws 2011, is amended to read:

25 **Sec. 7.** (1)(a) Except for the financial, cost, production or sales data and records specified in
 26 paragraph (b) of this subsection, the Department of Environmental Quality may not disclose any fi-
 27 nancial, cost, production or sales data and records of a stewardship organization, or of a specific
 28 producer, obtained by the department as part of the approval of a plan for a statewide architectural
 29 paint stewardship [*pilot*] program pursuant to section 4, chapter 777, Oregon Laws 2009, or as part
 30 of an annual report submitted pursuant to section 6, chapter 777, Oregon Laws 2009.

31 (b) If the Department of Environmental Quality determines that disclosure is necessary for the
 32 public to adequately understand the derivation of the architectural paint stewardship assessment
 33 described in section 4, chapter 777, Oregon Laws 2009, the level of the services or associated costs
 34 that are anticipated under the assessment or the services or associated costs that are delivered
 35 under the assessment, the department may disclose, in aggregate form, information contained in the
 36 financial, cost, production or sales data and records related to the level of service and associated
 37 costs for the following services offered by the statewide architectural paint stewardship [*pilot*] pro-
 38 gram:

39 (A) Collection, reuse, transportation, recycling, energy recovery, disposal and other processing
 40 of waste paint;

41 (B) Waste reduction efforts;

42 (C) Education and promotion; and

43 (D) Administration.

44 (2) The Department of Environmental Quality may not disclose the names of brands by specific
 45 producers obtained by the department as part of the approval of a plan for a statewide architectural

1 paint stewardship [*pilot*] program pursuant to section 4, chapter 777, Oregon Laws 2009. The de-
 2 partment may disclose separate lists indicating participating producers and participating brands of
 3 the statewide architectural paint stewardship [*pilot*] program.

4 (3) Nothing in this section shall impose additional reporting obligations on a stewardship or-
 5 ganization beyond those specified in sections 1 to 10, chapter 777, Oregon Laws 2009.

6
 7 **REPEALS**

8
 9 **SECTION 10. Sections 13 and 14, chapter 777, Oregon Laws 2009, are repealed.**

10
 11 **PENALTIES**

12
 13 **SECTION 11.** ORS 459.995 is amended to read:

14 459.995. (1) Except as provided in subsection (2) of this section, in addition to any other penalty
 15 provided by law:

16 (a) Any person who violates ORS 459.205, 459.270, 459.272, 459.386 to 459.405, 459.705 to 459.790,
 17 459A.005 to 459A.620, 459A.310 to 459A.335, 459A.675 to 459A.685 or 646A.080, or any rule or order
 18 of the Environmental Quality Commission pertaining to the disposal, collection, storage or reuse or
 19 recycling of solid wastes, as defined by ORS 459.005, or any rule or order pertaining to the disposal,
 20 storage or transportation of waste tires, as defined by ORS 459.705, or any rule or order pertaining
 21 to the sale of novelty items that contain encapsulated liquid mercury, [*shall incur*] **incurs** a civil
 22 penalty not to exceed \$25,000 a day for each day of the violation.

23 (b) Any person who violates the provisions of ORS 459.420 to 459.426 [*shall incur*] **incurs** a civil
 24 penalty not to exceed \$500 for each violation. Each battery that is disposed of improperly [*shall*
 25 *be*] **is** a separate violation. Each day an establishment fails to post the notice required under ORS
 26 459.426 [*shall be*] **is** a separate violation.

27 (c) For each day a city, county or metropolitan service district fails to provide the opportunity
 28 to recycle as required under ORS 459A.005, the city, county or metropolitan service district [*shall*
 29 *incur*] **incurs** a civil penalty not to exceed \$500 for each violation.

30 (d) Any person who violates the provisions of ORS 459.247 (1)(f) [*shall incur*] **incurs** a civil
 31 penalty not to exceed \$500 for each violation. Each covered electronic device that is disposed of
 32 improperly [*shall be*] **is** a separate violation.

33 (e) **Any retailer that violates the provisions of section 3 (3)(b), chapter 777, Oregon Laws**
 34 **2009, incurs a civil penalty not to exceed \$200 a day for each day of the violation.**

35 (f) **Any producer, stewardship organization or retailer that violates the provisions of**
 36 **section 3 (1), (2) or (3)(a), 4 or 6, chapter 777, Oregon Laws 2009, incurs a civil penalty not**
 37 **to exceed \$1,000 a day for each day of the violation.**

38 (2) Any product manufacturer or package manufacturer who violates ORS 459A.650 to 459A.665
 39 or any rule adopted under ORS 459A.650 to 459A.665 [*shall incur*] **incurs** a civil penalty not to ex-
 40 ceed \$1,000 per day for each day of the violation. A violation of ORS 459A.650 to 459A.665 [*shall*
 41 *not be*] **is not** subject to additional penalties under subsection (1) of this section.

42 (3) Any civil penalty authorized by subsection (1) or (2) of this section shall be imposed in the
 43 manner provided by ORS 468.135.

44
 45 **MISCELLANEOUS**

