

House Bill 3105

Sponsored by Representatives MCLAIN, KENY-GUYER, Senators DEMBROW, PROZANSKI; Representatives FAHEY, HELM, HERNANDEZ, MALSTROM, MARSH, NOSSE, SOLLMAN, Senators GELSER, RILEY, STEINER HAYWARD, TAYLOR

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**.

Establishes product stewardship program for household hazardous waste.

A BILL FOR AN ACT

1
2 Relating to household hazardous waste; creating new provisions; and amending ORS 459.415.

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

4 **SECTION 1. The Legislative Assembly finds and declares that it is in the best interest**
5 **of this state for manufacturers of products for household use that contain hazardous sub-**
6 **stances to take responsibility for:**

7 (1) **Developing, financing and implementing a statewide system to conveniently serve the**
8 **urban and rural areas of this state, for the collection and environmentally sound manage-**
9 **ment of household hazardous waste; and**

10 (2) **Developing and implementing strategies to reduce the use of practices and products**
11 **that generate household hazardous waste.**

12 **SECTION 2. As used in sections 1 to 10 of this 2017 Act:**

13 (1) **“Brand” means a name, symbols, words or marks that identify a covered product and**
14 **attribute the product to the owner of the brand as the manufacturer.**

15 (2)(a) **“Covered product” means:**

16 (A) **Any product offered for retail sale for household use if the product has any of the**
17 **following characteristics:**

18 (i) **The physical properties of the product meet the criteria for characteristic wastes**
19 **under the federal Resource Conservation and Recovery Act of 1976, P.L. 94-580, 42 U.S.C. 6901**
20 **et seq., as amended, including ignitability, corrosivity, reactivity or toxicity as defined in 40**
21 **C.F.R. 261 subpart C.**

22 (ii) **The product contains any substance that meets the criteria for designation as a class**
23 **2, 3, 4, 5, 6 or 8 hazardous material, as defined in 49 C.F.R. 173, by the United States De-**
24 **partment of Transportation pursuant to the Hazardous Materials Transportation Act of 1975,**
25 **49 U.S.C. 5101 et seq., as amended.**

26 (iii) **The product is a marine pollutant as defined at 49 C.F.R. 171.8.**

27 (iv) **The product requires registration under the Federal Insecticide, Fungicide, and**
28 **Rodenticide Act, P.L. 92-516, 7 U.S.C. 136, as amended.**

29 (B) **The container in which a product described in subparagraph (A) of this paragraph is**
30 **contained.**

31 (b) **“Covered product” does not mean:**

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 (A) A primary battery or rechargeable battery.
- 2 (B) A lamp that contains mercury.
- 3 (C) A thermostat that contains mercury.
- 4 (D) A pharmaceutical drug.
- 5 (3) “Environmentally sound management” means management using practices that
6 comply with all applicable laws, including but not limited to:
- 7 (a) Adequate record keeping;
- 8 (b) Tracking and documentation of the fate of covered products from collection through
9 final disposition within this state and outside this state;
- 10 (c) Performance audits and inspections;
- 11 (d) Compliance with worker health and safety requirements; and
- 12 (e) Maintenance of adequate environmental liability insurance and financial assurances
13 for a stewardship organization and contractors working for the stewardship organization.
- 14 (4) “Final disposition” means the point beyond which no further processing takes place
15 and the covered product has been:
- 16 (a) Transformed for direct use as a feedstock in producing new products; or
- 17 (b) Disposed of or processed for energy recovery in permitted facilities.
- 18 (5) “Manufacturer” means any person, irrespective of the selling technique used, includ-
19 ing that of remote sale:
- 20 (a) That manufactures covered products under a brand that it owns or is licensed to use;
- 21 (b) That sells covered products manufactured by others under a brand that the seller
22 owns;
- 23 (c) That manufactures covered products without affixing a brand;
- 24 (d) That manufactures covered products to which it affixes a brand that it does not own;
25 or
- 26 (e) On whose account covered products manufactured outside the United States are im-
27 ported into the United States. This paragraph does not apply if, at the time the covered
28 products are imported into the United States, another person is registered as the owner of
29 the brand of the covered products.
- 30 (6) “Person” means the United States, the state or a public or private corporation, local
31 government unit, public agency, individual, partnership, association, firm, trust, estate or
32 other legal entity.
- 33 (7) “Pharmaceutical drug” means any product sold for human medical or veterinary use,
34 including prescription, nonprescription, brand name and generic drugs.
- 35 (8) “Premium service” means a service such as at-home pickup service, including
36 curbside pickup service.
- 37 (9) “Primary battery” means any nonrechargeable battery, including but not limited to
38 an alkaline, a carbon-zinc and a lithium metal battery.
- 39 (10) “Rechargeable battery” means one or more voltaic or galvanic cells, electrically
40 connected to produce electric energy and designed to be recharged.
- 41 (11) “Retailer” means a person that offers new covered products for sale at retail
42 through any means, including but not limited to remote offerings such as sales outlets, cat-
43 alogs or the Internet.
- 44 (12) “Return share” means the minimum total weight of covered products that a
45 stewardship organization is responsible for providing environmentally sound management for

1 under an approved stewardship plan.

2 (13) “Stewardship organization” means a corporation, nonprofit organization or other le-
 3 gal entity created by a manufacturer or group of manufacturers to implement a stewardship
 4 program as described in sections 1 to 10 of this 2017 Act.

5 (14) “Stewardship program” means a statewide program for the environmentally sound
 6 management of covered products that is operated by a stewardship organization pursuant to
 7 a plan approved by the Department of Environmental Quality under section 6 of this 2017
 8 Act.

9 **SECTION 3.** (1) A manufacturer or retailer may not sell or offer for sale any covered
 10 product to any person in this state unless:

11 (a) The covered product is labeled with a brand; and

12 (b) The brand is included in a plan for a stewardship program that is submitted to and
 13 approved by the Department of Environmental Quality pursuant to sections 5 and 6 of this
 14 2017 Act.

15 (2) The manufacturer or retailer shall provide to consumers, at the time of sale, infor-
 16 mation on available collection opportunities for the covered product through the approved
 17 stewardship program.

18 (3) A retailer is in compliance with subsection (1) of this section if, on the date the cov-
 19 ered product is ordered from the manufacturer or its agent, the website maintained by the
 20 manufacturer’s stewardship organization lists the manufacturer, along with the
 21 manufacturer’s brand associated with the covered product, as a participant in an approved
 22 stewardship program.

23 **SECTION 4.** (1) Before January 1 of each year, a stewardship organization for covered
 24 products sold or offered for sale in this state shall register with the Department of Envi-
 25 ronmental Quality on a form provided by the department. The registration must include:

26 (a) A list of all manufacturers that are participating in the stewardship organization.

27 (b) A list of all the brands manufactured, sold or imported by the manufacturers partic-
 28 ipating in the stewardship organization, including those brands being offered for sale in this
 29 state by the manufacturers.

30 (c) Any other information required by the department to implement sections 1 to 10 of
 31 this 2017 Act.

32 (2) Not later than July 1 of each year, a stewardship organization for covered products
 33 sold or offered for sale in this state shall pay an administrative fee to the department.

34 (3) The administrative fee required under subsection (2) of this section shall be in an
 35 amount prescribed by the Environmental Quality Commission by rule, based on the esti-
 36 mated weight of covered products to be collected under the plan submitted by the
 37 stewardship organization for the upcoming year, that is sufficient to cover the anticipated
 38 costs of the department in implementing the stewardship program.

39 **SECTION 5.** (1) A stewardship organization shall submit a plan to the Department of
 40 Environmental Quality at the time of payment of the administrative fee required under sec-
 41 tion 4 of this 2017 Act.

42 (2) The stewardship organization’s plan must describe how the stewardship organization
 43 will:

44 (a) Finance, manage and conduct a statewide stewardship program to collect covered
 45 products from households in this state.

1 (b) Provide for the environmentally sound management of its return share of covered
2 products.

3 (c) Provide for public education on reducing the use of covered products and increasing
4 the use of nonhazardous alternative products when they are available.

5 (d) Provide for advertising and promotion of collection opportunities statewide and on a
6 regular basis.

7 (e) Coordinate with an architectural paint stewardship program as described in ORS
8 459A.820 to 459A.855.

9 (f) Provide for convenient service in every county in this state, including:

10 (A) Establishing enough permanent collection sites that ___ percent of the population of
11 this state is located within ___ miles of a permanent collection site; and

12 (B) Holding at least ___ collection events for covered products per year to serve each
13 underserved area or county in this state that does not have a permanent collection site.
14 Collection sites must be staffed and open to the public at a frequency adequate to meet the
15 needs of the area being served. Two or more stewardship programs may provide collection
16 service jointly.

17 (3) In operating a stewardship program, a stewardship organization shall:

18 (a) Implement the plan required under this section no later than 90 days after the De-
19 partment of Environmental Quality approves the plan.

20 (b) Meet or exceed the requirements for providing convenient service as described in
21 subsection (2) of this section.

22 (c) Offer publicly owned or publicly contracted household hazardous waste collection sites
23 the first opportunity to participate as collection sites.

24 (d) Provide for the environmentally sound management of covered products free of
25 charge, except that a stewardship organization that provides premium service for a house-
26 hold may charge for the additional cost of that premium service.

27 (e) Notify retailers that sell covered products made or sold by manufacturers participat-
28 ing in the stewardship organization about the stewardship program and provide the retailers
29 with information about available collection opportunities that the retailers will need in order
30 to comply with section 3 (2) of this 2017 Act.

31 (f) By March 1 of each year, provide a report to the department that details how the plan
32 required under this section was implemented during the previous calendar year.

33 (g) Establish and maintain a website that provides information about collection sites
34 under the program and lists manufacturers participating in the stewardship organization
35 under the plan and covered products that are sold or offered for sale in this state by par-
36 ticipating manufacturers.

37 **SECTION 6.** (1) The Department of Environmental Quality shall review and, no later than
38 90 days after the date that a stewardship organization plan is submitted under section 5 of
39 this 2017 Act, approve stewardship organization plans that comply with section 5 of this 2017
40 Act.

41 (2) Notwithstanding section 5 (3)(b) and (c) of this 2017 Act, if the department determines
42 that a plan does not provide convenient service in a county where a publicly owned or pub-
43 licly contracted household hazardous waste collection site is located, the department may
44 require a stewardship organization to pay the collection site for the collection of covered
45 products. Payments by a stewardship organization under this subsection shall include pay-

1 ment only for the direct costs to the collection site of receiving and preparing covered pro-
 2 ducts for transport to processors or disposal facilities. Charges to the stewardship
 3 organization may not exceed the actual costs of providing those services.

4 (3)(a) For calendar years 2018 and 2019, the department shall calculate the weight of
 5 covered products managed in this state during the previous calendar year using information
 6 supplied by household hazardous waste collection sites in this state and shall establish a
 7 statewide collection target for the calendar year that exceeds the previous year's weight by
 8 ___ percent.

9 (b) No later than March 31 of calendar years 2018 and 2019, respectively, the department
 10 shall inform each registered stewardship organization of its return share for the next cal-
 11 endar year.

12 (4) For calendar year 2020 and subsequent years, the department shall:

13 (a) Determine statewide and county weight-based collection targets for covered products;

14 (b) Set an annual minimum return share for each stewardship program that enables the
 15 state to reach the statewide and county weight-based collection targets;

16 (c) Require stewardship organizations that have not met their return shares for the
 17 previous calendar year to pay the department for the amount not achieved at a rate deter-
 18 mined by the department to be equivalent to the average cost per pound to the stewardship
 19 organization for the environmentally sound management of covered products during the
 20 previous calendar year; and

21 (d) Establish a system for granting credits to a stewardship program for the collection,
 22 transportation and recycling of covered products in an amount that exceeds the stewardship
 23 program's return share for a calendar year.

24 (5) The department shall report biennially to the Legislative Assembly on the operation
 25 of the statewide system for the environmentally sound management of covered products.

26 **SECTION 7.** The Environmental Quality Commission may adopt rules as necessary to
 27 implement sections 1 to 10 of this 2017 Act.

28 **SECTION 8.** (1) In accordance with the applicable provisions of ORS chapter 183 relating
 29 to contested case proceedings, the Department of Environmental Quality may issue an order
 30 requiring compliance with the provisions of sections 1 to 10 of this 2017 Act.

31 (2) The department may bring an action against any manufacturer or stewardship or-
 32 ganization that is in violation of the provisions of sections 1 to 10 of this 2017 Act.

33 **SECTION 9.** Fees collected by the Department of Environmental Quality under section 4
 34 of this 2017 Act shall be deposited in the State Treasury to the credit of the Household
 35 Hazardous Waste Stewardship Fund established under section 10 of this 2017 Act.

36 **SECTION 10.** The Household Hazardous Waste Stewardship Fund is established, separate
 37 and distinct from the General Fund. Interest earned by the Household Hazardous Waste
 38 Stewardship Fund shall be credited to the fund. Moneys in the fund are continuously appro-
 39 priated to the Department of Environmental Quality and may be used only to pay the costs
 40 of implementing sections 1 to 10 of this 2017 Act.

41 **SECTION 11.** ORS 459.415 is amended to read:

42 459.415. (1) Before any local government unit or stewardship organization operating a
 43 household hazardous waste stewardship program under sections 1 to 10 of this 2017 Act op-
 44 erates a permanent collection depot or periodic collection events for household hazardous waste or
 45 hazardous waste generated by conditionally exempt small quantity generators, the local government

1 **or stewardship organization** shall receive written approval from the Department of Environmental
 2 Quality.

3 (2) In requesting written approval from the department, a local government unit **or stewardship**
 4 **organization** proposing to operate a permanent collection depot or periodic collection events shall
 5 submit a detailed proposal. The proposal shall include at least the following information:

6 (a) Measures to be taken to insure safety of the public and employees or volunteers working at
 7 the collection site;

8 (b) Measures to be taken to prevent spills or releases of hazardous waste and a plan to respond
 9 to a spill or release if one occurs;

10 (c) A copy of the request for proposals for a contractor to properly manage and recycle or dis-
 11 pose of the waste collected in a manner consistent with the rules of the Environmental Quality
 12 Commission for hazardous waste collection, storage, transportation and disposal; and

13 (d) Measures to be implemented to insure no waste is accepted from generators of hazardous
 14 waste subject to regulation under ORS 466.005 to 466.385 unless the intent is to specifically collect
 15 such waste.

16 (3) The department may request additional information about the proposed program from the
 17 local government unit **or stewardship organization**. The department shall not approve a program
 18 unless the program provides adequate provisions to protect the public health, safety and the envi-
 19 ronment.

20 **SECTION 12. Sections 1 to 10 of this 2017 Act and the amendments to ORS 459.415 by**
 21 **section 11 of this 2017 Act apply to all manufacturers engaging in the activities set forth in**
 22 **section 2 (5) of this 2017 Act before, on or after January 1, 2018.**

23 **SECTION 13. Notwithstanding section 4 (3) of this 2017 Act, the administrative fee re-**
 24 **quired to be paid by July 1, 2018, under section 4 of this 2017 Act shall be set at \$0.025 per**
 25 **pound of covered product to be collected under the stewardship organization’s plan.**

26 **SECTION 14. (1) Sections 1 to 10 of this 2017 Act and the amendments to ORS 459.415**
 27 **by section 11 of this 2017 Act become operative on January 1, 2018.**

28 (2) The Environmental Quality Commission and the Department of Environmental Qual-
 29 ity may take any action before the operative date specified in subsection (1) of this section
 30 that is necessary for the commission or the department to exercise, on and after the oper-
 31 ative date specified in subsection (1) of this section, all of the duties, functions and powers
 32 conferred on the commission or the department by sections 1 to 10 of this 2017 Act and the
 33 amendments to ORS 459.415 by section 11 of this 2017 Act.

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