

House Bill 4126

Sponsored by Representatives MCLAIN, VIAL, SOLLMAN, KENY-GUYER; Representatives FAHEY, GREENLICK, HELM, HERNANDEZ, MALSTROM, MARSH, NOSSE, POWER, SALINAS, SANCHEZ, WITT, Senators DEMBROW, GELSER, MANNING JR, PROZANSKI, RILEY, TAYLOR (Presession filed.)

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.

Establishes Household Hazardous Waste Stewardship Fund.

Becomes operative January 1, 2019.

Requires initial plans for household hazardous waste stewardship programs to be submitted to Department of Environmental Quality no later than April 1, 2020. Requires household hazardous waste stewardship program pursuant to approved plan to be implemented no earlier than January 1, 2021.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to household hazardous waste; creating new provisions; amending ORS 459.415; and declaring an emergency.

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

HOUSEHOLD HAZARDOUS WASTE STEWARDSHIP

SECTION 1. The Legislative Assembly finds and declares that it is in the best interests of this state for manufacturers of products for household use that contain hazardous substances to take responsibility for developing, financing and implementing a statewide system to conveniently serve the urban and rural areas of this state, for the collection and environmentally sound management of household hazardous waste.

SECTION 2. As used in sections 1 to 11 of this 2018 Act:

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

(2)(a) "Covered product" means any product offered for retail sale for household use, contained in the receptacle in which the product is offered for retail sale, if the product has any of the following characteristics:

(A) The physical properties of the product meet the criteria for characteristic wastes under the federal Resource Conservation and Recovery Act of 1976, P.L. 94-580, 42 U.S.C. 6901 et seq., as amended, including ignitability, corrosivity, reactivity or toxicity as defined in 40 C.F.R. 261.20 to 261.24.

(B) The physical properties of the product meet the criteria for designation as a class 2, 3, 4, 5, 6 or 8 hazardous material, as defined in 49 C.F.R. 173, by the United States Department of Transportation pursuant to the Hazardous Materials Transportation Act of 1975, 49 U.S.C. 5101 et seq., as amended.

(C) The product is a marine pollutant as defined in 49 C.F.R. 171.8.

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

3 (b) "Covered product" does not mean:

4 (A) A primary battery or rechargeable battery.

5 (B) A lamp that contains mercury.

6 (C) A thermostat that contains mercury.

7 (D) A pharmaceutical drug.

8 (E) Products sold for commercial agricultural use that require registration under the
9 Federal Insecticide, Fungicide, and Rodenticide Act, P.L. 92-516, 7 U.S.C. 136, as amended.

10 (F) Architectural paint, as defined in ORS 459A.822.

11 (G) An electronic device, including but not limited to a covered electronic device as de-
12 fined in ORS 459A.305.

13 (3) "Environmentally sound management" means management using practices that
14 comply with all applicable laws, including but not limited to:

15 (a) Adequate record keeping;

16 (b) Tracking and documenting the fate of covered products from collection through final
17 disposition within this state and outside this state;

18 (c) Performance audits and inspections;

19 (d) Compliance with worker health and safety requirements; and

20 (e) Maintenance of adequate environmental liability insurance and financial assurances
21 for a stewardship organization and contractors working for the stewardship organization.

22 (4) "Final disposition" means the point beyond which no further processing takes place
23 and the covered product has been:

24 (a) Transformed for direct use as a feedstock in producing new products; or

25 (b) Disposed of or processed for energy recovery in permitted facilities.

26 (5) "Household hazardous waste stewardship program" means a statewide program for
27 the collection and environmentally sound management of covered products that is operated
28 by a stewardship organization pursuant to a plan approved by the Department of Environ-
29 mental Quality under section 6 of this 2018 Act.

30 (6) "Manufacturer" means any person, irrespective of the selling technique used, includ-
31 ing that of remote sale:

32 (a) That manufactures covered products under a brand that it owns or is licensed to use;

33 (b) That sells covered products manufactured by others under a brand that the seller
34 owns;

35 (c) That manufactures covered products without affixing a brand;

36 (d) That manufactures covered products to which it affixes a brand that it does not own;
37 or

38 (e) On whose account covered products manufactured outside the United States are im-
39 ported into the United States. This paragraph does not apply if, at the time the covered
40 products are imported into the United States, another person is registered as the owner of
41 the brand of the covered products.

42 (7) "Orphan covered product" means a covered product for which no manufacturer can
43 be identified.

44 (8) "Person" means the United States, the state or a public or private corporation, local
45 government unit, public agency, individual, partnership, association, firm, trust, estate or

1 other legal entity.

2 (9) "Pharmaceutical drug" means any product sold for human medical or veterinary use,
3 including prescription, nonprescription, brand name and generic drugs.

4 (10) "Premium service" means a service such as at-home pickup service, including
5 curbside pickup service.

6 (11) "Primary battery" means any nonrechargeable battery, including but not limited to
7 an alkaline, a carbon-zinc and a lithium metal battery.

8 (12) "Rechargeable battery" means one or more voltaic or galvanic cells, electrically
9 connected to produce electric energy and designed to be recharged.

10 (13) "Retailer" means a person that offers new covered products for sale at retail
11 through any means, including but not limited to remote offerings such as sales outlets, cat-
12 alogs or the Internet.

13 (14) "Return share" means the minimum total weight of covered products that a
14 stewardship organization is responsible for providing environmentally sound management for
15 under an approved stewardship plan.

16 (15) "Stewardship organization" means a corporation, nonprofit organization or other le-
17 gal entity designated by a manufacturer or group of manufacturers, or by the Department
18 of Environmental Quality, to implement a household hazardous waste stewardship program.

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

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

22 (b) The brand is included in a plan for a household hazardous waste stewardship program
23 that is submitted to and approved by the Department of Environmental Quality pursuant to
24 sections 5 and 6 of this 2018 Act.

25 (2) The manufacturer or retailer shall provide to consumers, at the time of sale, infor-
26 mation on available collection opportunities for the covered product through the approved
27 household hazardous waste stewardship program.

28 (3) A retailer is in compliance with subsection (1) of this section if, on the date the cov-
29 ered product is ordered from the manufacturer or its agent, the website maintained by the
30 manufacturer's stewardship organization lists the manufacturer, along with the
31 manufacturer's brand associated with the covered product, as a participant in an approved
32 household hazardous waste stewardship program.

33 **SECTION 4.** Before January 1 of each year, a stewardship organization for covered pro-
34 ducts sold or offered for sale in this state shall register with the Department of Environ-
35 mental Quality, for a period to cover the upcoming calendar year, on a form provided by the
36 department. The registration must include:

37 (1) A list of all manufacturers that are participating in the stewardship organization.

38 (2) A list of all the brands manufactured, sold or imported by the manufacturers partic-
39 ipating in the stewardship organization, including those brands being offered for sale in this
40 state by the manufacturers.

41 (3) Any other information required by the department to implement sections 1 to 11 of
42 this 2018 Act.

43 **SECTION 5.** (1) In a form and manner prescribed by the Department of Environmental
44 Quality, a stewardship organization shall submit to the department a plan for the develop-
45 ment and implementation of a household hazardous waste stewardship program. The plan

1 must describe how the stewardship organization will:

2 (a) Manage and conduct a household hazardous waste stewardship program.

3 (b) Fund the household hazardous waste stewardship program, with the costs of the
4 household hazardous waste stewardship program apportioned among each manufacturer
5 participating in the stewardship organization.

6 (c) Provide for the environmentally sound management of covered products.

7 (d) Provide for advertising and promoting collection opportunities statewide and on a
8 regular basis.

9 (e) Coordinate with an architectural paint stewardship program as described in ORS
10 459A.820 to 459A.855.

11 (f) Provide for convenient service as described in subsection (2) of this section.

12 (g) Coordinate with any other stewardship organizations in this state.

13 (2) Unless the department adopts by rule different standards, a plan provides for con-
14 venient service if:

15 (a) For a county or metropolitan service district where a permanent publicly owned or
16 publicly contracted household hazardous waste collection site is located, the plan indicates
17 that the stewardship organization will provide for the environmentally sound management
18 of covered products received at the permanent site and received through collection events
19 conducted by the county or metropolitan service district;

20 (b) For a county that does not have a permanent publicly owned or publicly contracted
21 household hazardous waste collection site and that contains all or part of a city having a
22 population of 25,000 or more, the plan indicates that the stewardship organization will hold
23 at least one collection event per year and provides for the environmentally sound manage-
24 ment of covered products received at the collection event held by the stewardship organiza-
25 tion and at any additional collection events held by the county; and

26 (c) For a county that does not have a permanent publicly owned or publicly contracted
27 household hazardous waste collection site and that does not contain all or part of a city
28 having a population of 25,000 or more, the plan indicates that the stewardship organization
29 will hold at least one collection event every other year and provides for the environmentally
30 sound management of covered products received at the collection event held by the
31 stewardship organization and at any additional collection events held by the county.

32 (3) In operating a household hazardous waste stewardship program, a stewardship or-
33 ganization shall:

34 (a) Implement the plan required under this section no later than 60 days after the de-
35 partment approves the plan.

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

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

40 (d) Provide for the environmentally sound management of all covered products, regard-
41 less of the manufacturer of the covered product and including orphan covered products, free
42 of charge, except that a stewardship organization that provides premium service for a
43 household may charge for the additional cost of that premium service.

44 (e) Notify retailers that sell covered products made or sold by manufacturers participat-
45 ing in the household hazardous waste stewardship organization about the stewardship pro-

1 **gram and provide the retailers with information about available collection opportunities that**
 2 **the retailers will need in order to comply with section 3 (2) of this 2018 Act.**

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

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

9 **SECTION 6. (1) The Department of Environmental Quality shall approve a plan submitted**
 10 **under section 5 of this 2018 Act if the stewardship organization submits a completed plan,**
 11 **the proposed plan meets the requirements of section 5 of this 2018 Act and the stewardship**
 12 **organization pays the fee established by the Environmental Quality Commission under sec-**
 13 **tion 8 of this 2018 Act.**

14 **(2)(a) Not later than 60 days after receiving a plan under section 5 of this 2018 Act, the**
 15 **department shall issue an order either approving or rejecting the plan. If the department**
 16 **rejects the plan, the department shall include in the order the reason or reasons for the re-**
 17 **jection.**

18 **(b) Not later than 60 days after the department issues an order rejecting a plan under**
 19 **paragraph (a) of this subsection, a stewardship organization must submit to the department**
 20 **a revised plan. Not later than 90 days after receiving a revised plan under this paragraph,**
 21 **the department shall issue an order either approving or rejecting the revised plan.**

22 **(c) If the department issues an order rejecting a revised plan under paragraph (b) of this**
 23 **subsection, the department may:**

24 **(A) Require the stewardship organization to further revise the plan in accordance with**
 25 **the processes set forth in paragraph (b) of this subsection; or**

26 **(B) Require each manufacturer or group of manufacturers that designated the**
 27 **stewardship organization to act as the agent of the manufacturer or group of manufacturers**
 28 **for the purpose of developing and implementing a household hazardous waste stewardship**
 29 **program to instead participate in a stewardship organization designated by the department**
 30 **under subsection (3) of this section.**

31 **(3)(a) The department may solicit for and designate a stewardship organization to act as**
 32 **an agent of a manufacturer or group of manufacturers for the purpose of developing and**
 33 **implementing a household hazardous waste stewardship program if the department deter-**
 34 **mines that designating a stewardship organization pursuant to this subsection is necessary**
 35 **to provide for the environmentally sound management of covered products in every county**
 36 **in this state.**

37 **(b) A stewardship organization designated by the department under this subsection is**
 38 **subject to all requirements applicable to stewardship organizations under sections 1 to 11 of**
 39 **this 2018 Act.**

40 **(c) The department may terminate a designation under this subsection if the department**
 41 **issues an order under subsection (2)(b) of this section rejecting a revised plan submitted by**
 42 **the designated stewardship organization.**

43 **(4) Notwithstanding section 5 (2)(a) of this 2018 Act, if the department determines that**
 44 **a plan does not provide convenient service in a county where a permanent publicly owned**
 45 **or publicly contracted household hazardous waste collection site is located, the department**

1 may require a stewardship organization to pay the collection site for the collection of covered
2 products. Payments by a stewardship organization under this subsection shall include pay-
3 ment for the costs to the collection site of receiving and preparing covered products for
4 transport to processors or disposal facilities. Charges to the stewardship organization may
5 not exceed the actual costs of providing those services.

6 (5)(a) For calendar year 2023 and each subsequent year, the department shall calculate
7 the weight of covered products managed in this state during the previous calendar year using
8 information supplied by the stewardship organizations and household hazardous waste col-
9 lection sites in this state and gathered from collection events, and shall establish a statewide
10 collection target for the upcoming calendar year.

11 (b) No later than June 1 of each year, the department shall inform each registered
12 stewardship organization of its return share for the next calendar year.

13 (6) The department shall:

14 (a) Determine statewide and county weight-based collection targets for covered products,
15 including orphan covered products;

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

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

23 (d) Establish a system for granting credits to a stewardship organization for collecting,
24 transporting and recycling covered products in an amount that exceeds the stewardship
25 organization's return share for a calendar year.

26 (7) The department may grant deferrals or exemptions to stewardship organizations from
27 requirements established under subsection (6) of this section.

28 (8) The department shall report biennially to the Legislative Assembly on the operation
29 of the statewide system for the environmentally sound management of covered products.

30 **SECTION 7.** (1) In accordance with the applicable provisions of ORS chapter 183 relating
31 to contested case proceedings, the Department of Environmental Quality may issue an order
32 requiring compliance with the provisions of sections 1 to 11 of this 2018 Act.

33 (2) The department may bring an action against any manufacturer or stewardship or-
34 ganization that is in violation of the provisions of sections 1 to 11 of this 2018 Act.

35 **SECTION 8.** (1) The Environmental Quality Commission shall adopt by rule an annual
36 registration fee to be paid by a stewardship organization. The fee adopted under this section
37 must be reasonably calculated to cover the costs of administering, implementing and en-
38 forcing sections 1 to 11 of this 2018 Act.

39 (2) The fee required by this section shall accompany the registration form submitted by
40 a stewardship organization under section 4 of this 2018 Act.

41 (3) Fees collected by the commission under this section shall be deposited in the State
42 Treasury to the credit of the Household Hazardous Waste Stewardship Fund established un-
43 der section 9 of this 2018 Act.

44 **SECTION 9.** The Household Hazardous Waste Stewardship Fund is established, separate
45 and distinct from the General Fund. Interest earned by the Household Hazardous Waste

1 **Stewardship Fund shall be credited to the fund. Moneys in the fund are continuously appro-**
 2 **priated to the Department of Environmental Quality and may be used only to pay the costs**
 3 **of administering, implementing and enforcing sections 1 to 11 of this 2018 Act.**

4 **SECTION 10. The Legislative Assembly declares that the collaboration of manufacturers**
 5 **and stewardship organizations to develop and implement household hazardous waste**
 6 **stewardship programs is in the best interests of the public. Therefore, the Legislative As-**
 7 **sembly declares its intent that the development, implementation and operation of household**
 8 **hazardous waste stewardship programs as required by sections 1 to 11 of this 2018 Act shall**
 9 **be exempt from state antitrust laws. The Legislative Assembly further declares its intent to**
 10 **provide immunity for the development, implementation and operation of household hazardous**
 11 **waste stewardship programs as required by sections 1 to 11 of this 2018 Act from federal**
 12 **antitrust laws. This section does not authorize any person to engage in activities or to**
 13 **conspire to engage in activities that constitute per se violations of state or federal antitrust**
 14 **laws that are not authorized under sections 1 to 11 of this 2018 Act.**

15 **SECTION 11. The Environmental Quality Commission may adopt rules as necessary to**
 16 **implement sections 1 to 11 of this 2018 Act.**

17 **SECTION 12. ORS 459.415 is amended to read:**

18 **459.415. (1) Before any local government unit or stewardship organization operating a**
 19 **household hazardous waste stewardship program under sections 1 to 11 of this 2018 Act op-**
 20 **erates a permanent collection depot or periodic collection events for household hazardous waste or**
 21 **hazardous waste generated by conditionally exempt small quantity generators, the local government**
 22 **unit or stewardship organization shall receive written approval from the Department of Environ-**
 23 **mental Quality.**

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

27 **(a) Measures to be taken to [insure] ensure safety of the public and employees or volunteers**
 28 **working at the collection site;**

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

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

34 **(d) Measures to be implemented to [insure] ensure no waste is accepted from generators of**
 35 **hazardous waste subject to regulation under ORS 466.005 to 466.385 unless the intent is to specif-**
 36 **ically collect such waste.**

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

41 **SECTION 13. Sections 1 to 11 of this 2018 Act and the amendments to ORS 459.415 by**
 42 **section 12 of this 2018 Act apply to all manufacturers engaging in the activities set forth in**
 43 **section 2 (6) of this 2018 Act before, on or after January 1, 2019.**

44
 45 **MISCELLANEOUS**

