

House Bill 2772

Sponsored by Representatives MCLAIN, KENY-GUYER, Senators DEMBROW, TAYLOR; Senators MANNING JR, RILEY

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, 2020.

Requires initial plans for household hazardous waste stewardship programs to be submitted to Department of Environmental Quality no later than April 1, 2021. Requires household hazardous waste stewardship program developed pursuant to approved plan to be implemented no earlier than January 1, 2022.

Imposes penalty for violation of program provisions not to exceed \$25,000 per day for each day of violation.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to household hazardous waste; creating new provisions; amending ORS 459.415 and 459.995;
3 and declaring an emergency.

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

HOUSEHOLD HAZARDOUS WASTE STEWARDSHIP

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8 **SECTION 1. The Legislative Assembly finds and declares that it is in the best interests**
9 **of this state for manufacturers of products for household use that contain hazardous sub-**
10 **stances to take responsibility for developing, financing and implementing a statewide system**
11 **to conveniently serve the urban and rural areas of this state, for the collection and envi-**
12 **ronmentally sound management of household hazardous waste.**

13 **SECTION 2. As used in sections 1 to 11 of this 2019 Act:**

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

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

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

23 (B) The physical properties of the product meet the criteria for designation as a class 2,
24 3, 4, 5, 6 or 8 hazardous material, as defined in 49 C.F.R. 173, by the United States Depart-
25 ment of Transportation pursuant to the Hazardous Materials Transportation Act of 1975, 49
26 U.S.C. 5101 et seq., as amended.

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 (C) The product is a marine pollutant as defined in 49 C.F.R. 171.8.
- 2 (D) The product requires registration under the Federal Insecticide, Fungicide, and
3 Rodenticide Act, P.L. 92-516, 7 U.S.C. 136, as amended.
- 4 (b) "Covered product" does not mean:
- 5 (A) A primary battery or rechargeable battery.
- 6 (B) A lamp that contains mercury.
- 7 (C) A thermostat that contains mercury.
- 8 (D) A pharmaceutical drug.
- 9 (E) Products sold for commercial agricultural use that require registration under the
10 Federal Insecticide, Fungicide, and Rodenticide Act, P.L. 92-516, 7 U.S.C. 136, as amended.
- 11 (F) Architectural paint, as defined in ORS 459A.822.
- 12 (G) An electronic device, including but not limited to a covered electronic device as de-
13 fined in ORS 459A.305.
- 14 (H) A vitamin or dietary supplement.
- 15 (I) A liquefied petroleum gas container or receptacle that is designed to be refilled.
- 16 (3) "Environmentally sound management" includes, but is not limited to, the following
17 management practices, implemented in a manner that is designed to protect public health,
18 safety and the environment:
- 19 (a) Adequate record keeping;
- 20 (b) Keeping detailed documentation of the methods used to:
- 21 (A) Manage covered products; and
- 22 (B) Track and document the fate of covered products from collection through final dis-
23 position within this state and outside this state;
- 24 (c) Performance audits and inspections;
- 25 (d) Compliance with worker health and safety requirements; and
- 26 (e) Maintenance of adequate environmental liability insurance and financial assurances
27 for a stewardship organization and contractors working for the stewardship organization.
- 28 (4) "Final disposition" means the point beyond which no further processing takes place
29 and the covered product has been:
- 30 (a) Transformed for direct use as a feedstock in producing new products; or
- 31 (b) Disposed of or processed for energy recovery in permitted facilities.
- 32 (5) "Household hazardous waste stewardship program" means a statewide program for
33 the collection and environmentally sound management of covered products that is funded
34 and operated by a stewardship organization pursuant to a plan approved by the Department
35 of Environmental Quality under section 6 of this 2019 Act.
- 36 (6) "Manufacturer" means any person, irrespective of the selling technique used, includ-
37 ing that of remote sale:
- 38 (a) That manufactures covered products under a brand that it owns or is licensed to use;
- 39 (b) That sells covered products manufactured by others under a brand that the seller
40 owns;
- 41 (c) That manufactures covered products without affixing a brand;
- 42 (d) That manufactures covered products to which it affixes a brand that it does not own;
43 or
- 44 (e) On whose account covered products manufactured outside the United States are im-
45 ported into the United States. This paragraph does not apply if, at the time the covered

1 products are imported into the United States, another person is registered as the owner of
2 the brand of the covered products.

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

5 (8) "Person" means the United States, the state or a public or private corporation, local
6 government unit, public agency, individual, partnership, association, firm, trust, estate or
7 other legal entity.

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

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

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

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

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

19 (14) "Stewardship organization" means a corporation, nonprofit organization or other le-
20 gal entity designated by a manufacturer or group of manufacturers to implement a house-
21 hold hazardous waste stewardship program.

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

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

25 (b) The brand is included in a plan for a household hazardous waste stewardship program
26 that is submitted to and approved by the Department of Environmental Quality pursuant to
27 sections 5 and 6 of this 2019 Act.

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

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

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

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

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

44 (3) Any other information required by the department to implement sections 1 to 11 of
45 this 2019 Act.

1 **SECTION 5.** (1) In a form and manner prescribed by the Department of Environmental
 2 Quality, a stewardship organization shall submit to the department a plan for the develop-
 3 ment and implementation of a household hazardous waste stewardship program. The plan
 4 must describe how the stewardship organization will:

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

6 (b) Fund the household hazardous waste stewardship program, including how the
 7 stewardship organization will fund all the costs incurred for the environmentally sound
 8 management of covered products during each stage of management, from collection of the
 9 covered products from the public through final disposition of the covered products.

10 (c) Apportion the costs of the household hazardous waste stewardship program among
 11 each manufacturer participating in the stewardship organization.

12 (d) Provide for the environmentally sound management of covered products.

13 (e) Provide for advertising and promoting collection opportunities statewide and on a
 14 regular basis.

15 (f) Work to develop and implement the household hazardous waste stewardship program
 16 in coordination with:

17 (A) An approved statewide architectural paint stewardship program as described in ORS
 18 459A.820 to 459A.855; and

19 (B) Any other stewardship organizations in this state.

20 (g) Provide for convenient service as described in subsection (2) of this section.

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

23 (a) For a county or metropolitan service district where a permanent publicly owned or
 24 publicly contracted household hazardous waste collection site is located, the plan describes
 25 how the stewardship organization will provide for the environmentally sound management
 26 of covered products received at the permanent site and received through collection events
 27 conducted by an entity approved by the department to conduct collection events, the county
 28 or the metropolitan service district;

29 (b) For a county that does not have a permanent publicly owned or publicly contracted
 30 household hazardous waste collection site and that contains all or part of a city having a
 31 population of 25,000 or more, the plan describes how the stewardship organization will pro-
 32 vide for:

33 (A) At least one collection event per year; and

34 (B) The environmentally sound management of covered products received at the col-
 35 lection event provided for by the stewardship organization and at any additional collection
 36 events conducted by the department, an entity approved by the department to conduct col-
 37 lection events or the county; and

38 (c) For a county that does not have a permanent publicly owned or publicly contracted
 39 household hazardous waste collection site and that does not contain all or part of a city
 40 having a population of 25,000 or more, the plan describes how the stewardship organization
 41 will provide for:

42 (A) At least one collection event every other year; and

43 (B) The environmentally sound management of covered products received at the col-
 44 lection event provided for by the stewardship organization and at any additional collection
 45 events conducted by the department, an entity approved by the department to conduct col-

1 lection events or the county.

2 (3)(a) A plan submitted under subsection (1) of this section must describe how the
 3 stewardship organization has made a good faith effort to coordinate with an appropriate local
 4 government as defined in ORS 174.116, collection service franchise holder under ORS 459A.085
 5 or person who provides collection service for the payment of costs associated with the re-
 6 ceipt at collection events of products that are not covered products.

7 (b) If the department determines that the stewardship organization has made a good
 8 faith effort under paragraph (a) of this subsection and was unable to coordinate with the
 9 appropriate local government, collection service franchise holder or person who provides
 10 collection service, the department may allow the stewardship organization to refuse to ac-
 11 cept at collection events products that are not covered products.

12 (4) In operating a household hazardous waste stewardship program, a stewardship or-
 13 ganization shall:

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

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

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

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

24 (e) Notify retailers that sell or offer for sale covered products made or sold by man-
 25 ufacturers participating in the household hazardous waste stewardship organization about
 26 the stewardship program and provide the retailers with information about available col-
 27 lection opportunities that the retailers will need in order to comply with section 3 (2) of this
 28 2019 Act.

29 (f) By April 1 of each year, or by a later date as determined by the department, provide
 30 a report for review by the department that details how the plan required under this section
 31 was implemented during the previous calendar year, including but not limited to information
 32 about the services that were provided and the material collected during the previous calen-
 33 dar year.

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

38 **SECTION 6.** (1) The Department of Environmental Quality shall approve a plan submitted
 39 under section 5 of this 2019 Act if the stewardship organization submits a completed plan,
 40 the proposed plan meets the requirements of section 5 of this 2019 Act and the stewardship
 41 organization pays the fee established by the Environmental Quality Commission under sec-
 42 tion 8 of this 2019 Act.

43 (2)(a) Not later than 60 days after receiving a plan under section 5 of this 2019 Act, the
 44 department shall approve or reject the plan. If the department rejects the plan, the depart-
 45 ment shall inform the stewardship organization of the reason or reasons for the rejection.

1 (b) Not later than 60 days after the department rejects a plan under paragraph (a) of this
2 subsection, a stewardship organization must submit to the department a revised plan. Not
3 later than 90 days after receiving a revised plan under this paragraph, the department shall
4 approve or reject the revised plan.

5 (3) Notwithstanding section 5 (2)(a) of this 2019 Act, if the department determines that
6 a plan does not provide convenient service in a county where a permanent publicly owned
7 or publicly contracted household hazardous waste collection site is located, the department
8 may require a stewardship organization to pay an entity approved by the department to
9 conduct collection events for the costs the approved entity incurs for the collection, trans-
10 port, processing and disposal or other management of covered products. Charges to the
11 stewardship organization may not exceed the actual costs of providing those services.

12 (4) The department may adopt by rule methods for measuring program performance,
13 which may include, but need not be limited to, convenience standards or public awareness
14 measures.

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

17 **SECTION 7.** (1) In accordance with the applicable provisions of ORS chapter 183 relating
18 to contested case proceedings, the Department of Environmental Quality may issue an order
19 requiring compliance with the provisions of sections 1 to 11 of this 2019 Act.

20 (2) The department may bring an action against any person that is in violation of the
21 provisions of sections 1 to 11 of this 2019 Act.

22 **SECTION 8.** (1) The Environmental Quality Commission shall adopt by rule an annual
23 registration fee to be paid by a stewardship organization. The fee adopted under this section
24 must be reasonably calculated to cover the costs of administering, implementing and en-
25 forcing sections 1 to 11 of this 2019 Act.

26 (2) The fee required by this section shall accompany the registration form submitted by
27 a stewardship organization under section 4 of this 2019 Act.

28 (3) Fees collected by the commission under this section shall be deposited in the State
29 Treasury to the credit of the Household Hazardous Waste Stewardship Fund established un-
30 der section 9 of this 2019 Act.

31 **SECTION 9.** The Household Hazardous Waste Stewardship Fund is established, separate
32 and distinct from the General Fund. Interest earned by the Household Hazardous Waste
33 Stewardship Fund shall be credited to the fund. Moneys in the fund are continuously appro-
34 priated to the Department of Environmental Quality and may be used only to pay the costs
35 of administering, implementing and enforcing sections 1 to 11 of this 2019 Act.

36 **SECTION 10.** The Legislative Assembly declares that the collaboration of manufacturers
37 and stewardship organizations to develop and implement household hazardous waste
38 stewardship programs is in the best interests of the public. Therefore, the Legislative As-
39 sembly declares its intent that the development, implementation and operation of household
40 hazardous waste stewardship programs as required by sections 1 to 11 of this 2019 Act shall
41 be exempt from state antitrust laws. The Legislative Assembly further declares its intent to
42 provide immunity for the development, implementation and operation of household hazardous
43 waste stewardship programs as required by sections 1 to 11 of this 2019 Act from federal
44 antitrust laws. This section does not authorize any person to engage in activities or to
45 conspire to engage in activities that constitute per se violations of state or federal antitrust

1 **laws that are not authorized under sections 1 to 11 of this 2019 Act.**

2 **SECTION 11. The Environmental Quality Commission may adopt rules as necessary to**
 3 **implement sections 1 to 11 of this 2019 Act.**

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

5 459.415. (1) Before any local government **unit or stewardship organization operating a**
 6 **household hazardous waste stewardship program under sections 1 to 11 of this 2019 Act** op-
 7 erates a permanent collection depot or periodic collection events for household hazardous waste or
 8 hazardous waste generated by conditionally exempt small quantity generators, the local government
 9 **unit or stewardship organization** shall receive written approval from the Department of Environ-
 10 mental Quality.

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

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

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

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

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

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

28 **SECTION 13.** ORS 459.995 is amended to read:

29 459.995. (1) Except as provided in subsection (2) of this section, in addition to any other penalty
 30 provided by law:

31 (a) Any person who violates ORS 459.205, 459.270, 459.272, 459.386 to 459.405, 459.705 to 459.790,
 32 459A.005 to 459A.620, 459A.310 to 459A.335, 459A.675 to 459A.685 or 646A.080 **or sections 1 to 11**
 33 **of this 2019 Act**, or any rule or order of the Environmental Quality Commission pertaining to the
 34 disposal, collection, storage or reuse or recycling of solid wastes, as defined by ORS 459.005, or any
 35 rule or order pertaining to the disposal, storage or transportation of waste tires, as defined by ORS
 36 459.705, or any rule or order pertaining to the sale of novelty items that contain encapsulated liquid
 37 mercury, incurs a civil penalty not to exceed \$25,000 per day for each day of the violation.

38 (b) Any person who violates the provisions of ORS 459.420 to 459.426 incurs a civil penalty not
 39 to exceed \$500 for each violation. Each battery that is disposed of improperly is a separate violation.
 40 Each day an establishment fails to post the notice required under ORS 459.426 is a separate vio-
 41 lation.

42 (c) For each day a city, county or metropolitan service district fails to provide the opportunity
 43 to recycle as required under ORS 459A.005, the city, county or metropolitan service district incurs
 44 a civil penalty not to exceed \$500 for each violation.

45 (d) Any person who violates the provisions of ORS 459.247 (1)(f) incurs a civil penalty not to

1 exceed \$500 for each violation. Each covered electronic device that is disposed of improperly is a
 2 separate violation.

3 (e) Any retailer that violates the provisions of ORS 459A.825 (1) or (2)(b) incurs a civil penalty
 4 not to exceed \$100 per day for each day of the violation.

5 (f) Any producer that violates the provisions of ORS 459A.825 (1) incurs a civil penalty not to
 6 exceed \$1,000 per day for each day of the violation.

7 (g) Any stewardship organization that violates the provisions of ORS 459A.825 (2)(a), 459A.827,
 8 459A.830 to 459A.837 or 459A.842 incurs a civil penalty not to exceed \$1,000 per day for each day
 9 of the violation.

10 (2) Any product manufacturer or package manufacturer who violates ORS 459A.650 to 459A.665
 11 or any rule adopted under ORS 459A.650 to 459A.665 incurs a civil penalty not to exceed \$1,000 per
 12 day for each day of the violation. A violation of ORS 459A.650 to 459A.665 is not subject to addi-
 13 tional penalties under subsection (1) of this section.

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

16 **SECTION 14. Sections 1 to 11 of this 2019 Act and the amendments to ORS 459.415 and**
 17 **459.995 by sections 12 and 13 of this 2019 Act apply to all manufacturers engaging in the ac-**
 18 **tivities set forth in section 2 (6) of this 2019 Act before, on or after January 1, 2020.**

19
 20 **MISCELLANEOUS**

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 22 **SECTION 15. (1) Sections 1 to 11 of this 2019 Act and the amendments to ORS 459.415**
 23 **and 459.995 by sections 12 and 13 of this 2019 Act become operative on January 1, 2020.**

24 (2) The Environmental Quality Commission and the Department of Environmental Qual-
 25 ity may take any action before the operative date specified in subsection (1) of this section
 26 that is necessary for the commission and the department to exercise, on and after the op-
 27 erative date specified in subsection (1) of this section, all of the duties, functions and powers
 28 conferred on the commission and the department by sections 1 to 11 of this 2019 Act and the
 29 amendments to ORS 459.415 and 459.995 by sections 12 and 13 of this 2019 Act.

30 **SECTION 16. (1) Initial plans for a household hazardous waste stewardship program must**
 31 **be submitted to the Department of Environmental Quality under section 5 of this 2019 Act**
 32 **not later than April 1, 2021.**

33 (2) Notwithstanding section 5 (4)(a) of this 2019 Act, a household hazardous waste
 34 stewardship program developed pursuant to an approved plan under sections 5 and 6 of this
 35 2019 Act may first be implemented no earlier than January 1, 2022.

36
 37 **CAPTIONS**

38
 39 **SECTION 17. The unit captions used in this 2019 Act are provided only for the conven-**
 40 **ience of the reader and do not become part of the statutory law of this state or express any**
 41 **legislative intent in the enactment of this 2019 Act.**

42
 43 **EMERGENCY CLAUSE**

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 45 **SECTION 18. This 2019 Act being necessary for the immediate preservation of the public**

1 **peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect**
2 **on its passage.**

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