Senate Bill 199

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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

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

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

SECTION 1. The Legislative Assembly finds and declares that it is in the best interest of this state for manufacturers of products for household use that contain hazardous substances to take responsibility for:

(1) 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; and

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

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

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

(i) 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 subpart C.

(ii) The product contains any substance that meets 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.

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


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

(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.

LC 2363
(A) A primary battery or rechargeable battery.

(B) A lamp that contains mercury.

(C) A thermostat that contains mercury.

(D) A pharmaceutical drug.

(3) “Environmentally sound management” means management using practices that comply with all applicable laws, including but not limited to:
   (a) Adequate record keeping;
   (b) Tracking and documentation of the fate of covered products from collection through final disposition within this state and outside this state;
   (c) Performance audits and inspections;
   (d) Compliance with worker health and safety requirements; and
   (e) Maintenance of adequate environmental liability insurance and financial assurances for a stewardship organization and contractors working for the stewardship organization.

(4) “Final disposition” means the point beyond which no further processing takes place and the covered product has been:
   (a) Transformed for direct use as a feedstock in producing new products; or
   (b) Disposed of or processed for energy recovery in permitted facilities.

(5) “Manufacturer” means any person, irrespective of the selling technique used, including that of remote sale:
   (a) That manufactures covered products under a brand that it owns or is licensed to use;
   (b) That sells covered products manufactured by others under a brand that the seller owns;
   (c) That manufactures covered products without affixing a brand;
   (d) That manufactures covered products to which it affixes a brand that it does not own; or
   (e) On whose account covered products manufactured outside the United States are imported into the United States. This paragraph does not apply if, at the time the covered products are imported into the United States, another person is registered as the owner of the brand of the covered products.

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

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

(8) “Premium service” means a service such as at-home pickup service, including curbside pickup service.

(9) “Primary battery” means any nonrechargeable battery, including but not limited to an alkaline, a carbon-zinc and a lithium metal battery.

(10) “Rechargeable battery” means one or more voltaic or galvanic cells, electrically connected to produce electric energy and designed to be recharged.

(11) “Retailer” means a person that offers new covered products for sale at retail through any means, including but not limited to remote offerings such as sales outlets, catalogs or the Internet.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 5. (1) A stewardship organization shall submit a plan to the Department of Environmental Quality at the time of payment of the administrative fee required under section 4 of this 2017 Act.

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

(a) Finance, manage and conduct a statewide stewardship program to collect covered products from households in this state.
(b) Provide for the environmentally sound management of its return share of covered products.

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

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

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

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

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

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

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

(a) Implement the plan required under this section no later than 90 days after the Department of Environmental Quality approves the plan.

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

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

(d) Provide for the environmentally sound management of covered products free of charge, except that a stewardship organization that provides premium service for a household may charge for the additional cost of that premium service.

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

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

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

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

(2) Notwithstanding section 5 (3)(b) and (c) of this 2017 Act, if the department determines that a plan does not provide convenient service in a county where a publicly owned or publicly contracted household hazardous waste collection site is located, the department may require a stewardship organization to pay the collection site for the collection of covered products. Payments by a stewardship organization under this subsection shall include pay-
ment only for the direct costs to the collection site of receiving and preparing covered products for transport to processors or disposal facilities. Charges to the stewardship organization may not exceed the actual costs of providing those services.

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 11. ORS 459.415 is amended to read:

459.415. (1) Before any local government unit or stewardship organization operating a household hazardous waste stewardship program under sections 1 to 10 of this 2017 Act operates a permanent collection depot or periodic collection events for household hazardous waste or hazardous waste generated by conditionally exempt small quantity generators, the local government
or stewardship organization shall receive written approval from the Department of Environmental Quality.

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

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

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

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

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

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

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

SECTION 13. Notwithstanding section 4 (3) of this 2017 Act, the administrative fee required to be paid by July 1, 2018, under section 4 of this 2017 Act shall be set at $0.025 per pound of covered product to be collected under the stewardship organization's plan.

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

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