

SENATE PROPOSAL OF AMENDMENT

H. 695

An act relating to establishing a product stewardship program for primary batteries

The Senate proposes to the House to amend the bill as follows:

First: In Sec. 1, in 10 V.S.A. § 7581, by striking out subdivisions (10) and (11) in their entirety and inserting in lieu thereof the following to read as follows:

(10) “Primary battery” means a nonrechargeable battery weighing two kilograms or less, including alkaline, carbon-zinc, and lithium metal batteries. “Primary battery” shall not mean:

(A) batteries intended for industrial, business-to-business, warranty or maintenance services, or nonpersonal use;

(B) a battery that is sold in a computer, computer monitor, computer peripheral, printer, television, or device containing a cathode ray tube;

(C) a battery that is not easily removable or is not intended to be removed from a consumer product; and

(D) a battery that is sold or used in a medical device, as that term is defined in the federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 321(h), as may be amended.

(11) “Primary battery producer” or “producer” means one of the following with regard to a primary battery that is sold or offered for sale in the State:

(A) a person who manufactures a primary battery and who sells or offers for sale that primary battery in the State under the person’s own name or brand;

(B) if subdivision (A) of this subdivision (11) does not apply, a person who owns or licenses a trademark or brand under which a primary battery is sold or offered for sale whether or not the trademark is registered; or

(C) if subdivisions (A) and (B) of this subdivision (11) do not apply, a person who imports a primary battery into the State for sale.

and in subdivision (18)(B), before “medical device” by striking out “an implanted” and inserting in lieu thereof a

Second: In Sec. 1, in 10 V.S.A. § 7582, by striking out subsections (a) and (b) in their entirety and inserting in lieu thereof the following to read as follows:

(a) Sale prohibited. Except as set forth under subsections (b) and (c) of this section, beginning on January 1, 2016, a producer of a primary battery shall not sell, offer for sale, or deliver to a retailer for subsequent sale a primary battery unless:

(1) the producer or the primary battery stewardship organization in which the producer is participating is registered under an approved and implemented primary battery stewardship plan;

(2) the producer or primary battery stewardship organization has paid the fee under section 7594 of this title; and

(3) the name of the producer and the producer's brand are designated on the Agency website as covered by an approved primary battery stewardship plan.

and by relettering the remaining subsections to be alphabetically correct.

Third: In Sec. 1, in 10 V.S.A. § 7584, by striking out subdivision (b)(8) in its entirety and inserting in lieu thereof the following to read as follows:

(8) Performance goal; collection rate. A primary battery stewardship plan shall include a collection rate performance goal for the primary batteries subject to the plan. The collection rate includes the estimated total weight of primary batteries that will be sold or offered for sale in the State by the producer or the producers participating in the primary battery stewardship plan.

Fourth: In Sec. 1, in 10 V.S.A. § 7585, by striking out subsection (a) in its entirety and inserting in lieu thereof the following to read as follows:

(a) Annual report. On or before March 1, 2017, and annually thereafter, a producer or a primary battery stewardship organization shall submit a report to the Secretary that contains the following:

(1) the weight of primary batteries collected by the producer or the primary battery stewardship organization in the prior calendar year;

(2) the estimated percentage, by weight, of rechargeable batteries collected by the producer or the primary battery stewardship organization in the prior calendar year;

(3) the percentage of primary batteries collected in the prior calendar year that are from producers who are not participating in any approved stewardship plan, based on periodic sorting of primary batteries by the reporting producer;

(4) the collection rate achieved in the prior calendar year under the primary battery stewardship plan, including a report of the estimate total sales data by weight for primary batteries sold in the State for the previous three calendar years;

(5) the locations for all collection points set up by the primary battery producers covered by the primary battery stewardship plan and contact information for each location;

(6) examples and description of educational materials used to increase collection;

(7) the manner in which the collected primary batteries were managed;

(8) any material change to the primary battery stewardship plan approved by the Secretary pursuant to section 7586 of this title; and

(9) the cost of implementation of the primary battery stewardship plan, including the costs of collection, recycling, education, and outreach.

Fifth: In Sec. 1, in 10 V.S.A. § 7586, in subsection (f), in the last sentence, by striking out “7582(d)” where it appears and inserting in lieu thereof 7582(c)

Sixth: In Sec. 1, in 10 V.S.A. § 7589, in subdivision (a)(1), after “reimbursement from the following entities of” and before “costs per unit” by striking out “direct” and inserting in lieu thereof reimbursable

and by striking out subsection (c) in its entirety and inserting in lieu thereof the following:

(c) Reimbursable costs. Under this subchapter, reimbursement shall be allowed only for those costs incurred in collecting the batteries subject to the reimbursement request. Reimbursable costs include:

(1) costs of collection, transport, recycling, and other methods of disposition identified in a primary battery stewardship plan approved pursuant to section 7586 of this title; and

(2) reasonable educational, promotional, or administrative costs.

Seventh: In Sec. 1, in 10 V.S.A. § 7590, in subdivision (a)(1), after “organization that incurs reimbursable” and before “costs under section 7589” by striking out “direct”

and in subdivision (a)(3), after “the amount of reimbursement, and the” and before “costs assessed by each” by striking out “direct” and inserting in lieu thereof reimbursable

Eighth: In Sec. 1, in 10 V.S.A. § 7591, by striking out subsections (a)–(e) in their entirety and inserting in lieu thereof the following to read:

(a) Action against producer with no primary battery stewardship plan. A producer, a primary battery stewardship organization implementing an approved primary battery stewardship plan in compliance with the requirements of this chapter, a rechargeable battery steward, or a rechargeable battery stewardship organization may bring a civil action against another producer or primary battery stewardship organization for damages when:

(1) the plaintiff producer, primary battery stewardship organization, rechargeable battery steward, or rechargeable battery stewardship organization incurs more than \$1,000.00 in actual reimbursable costs collecting, handling, recycling, or properly disposing of primary batteries sold or offered for sale in the State by that other producer;

(2) the producer from whom damages are sought:

(A) can be identified as the producer of the collected primary batteries from a brand or marking on the discarded battery or from other information available to the plaintiff producer, primary battery stewardship organization, rechargeable battery steward, or rechargeable battery stewardship organization; and

(B) does not operate or participate in an approved primary battery stewardship organization in the State or is not otherwise in compliance with the requirements of this chapter.

(b) Action against producer with an approved primary battery stewardship plan. A producer, a primary battery stewardship organization in compliance with the requirements of this chapter, a rechargeable battery steward, or a rechargeable battery stewardship organization may bring a civil action for damages against a primary producer or primary battery stewardship organization in the State that is in compliance with the requirements of this chapter, provided that the conditions of subsection (d) of this section have been met.

(c) Action against rechargeable battery stewardship organization. A producer, a primary battery stewardship organization in compliance with the requirements of this chapter, a rechargeable battery steward, or a rechargeable battery stewardship organization may bring a civil action for damages against a rechargeable battery stewardship organization registered by the Secretary, provided that the conditions of subsection (d) of this section have been met.

(d) Condition precedent to cause of action. Except as authorized under subsection (a) of this section, a cause of action under this section shall be allowed only if:

(1) a plaintiff producer, primary battery stewardship organization, or rechargeable battery stewardship organization submitted a reimbursement request to another producer, primary battery stewardship organization, or rechargeable battery stewardship organization under subchapter 4 of this chapter; and

(2) the plaintiff producer, primary battery stewardship organization, or rechargeable battery stewardship organization does not receive reimbursement within:

(A) 90 days of the reimbursement request, if no independent audit is requested under subchapter 4 of this chapter; or

(B) 60 days after completion of an audit if an independent audit is requested under subchapter 4 of this chapter, and the audit confirms the validity of the reimbursement request.

And by relettering the remaining subsections to be alphabetically correct

And in the new subsection (g) (Damages; definition), after “means the actual,” and before “costs a plaintiff producer” by striking out “direct” and inserting in lieu thereof reimbursable