

Yellow highlighted language = change from previous draft

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Natural Resources and Energy to which was referred  
3 House Bill No. 695 entitled “An act relating to establishing a product  
4 stewardship program for primary batteries” respectfully reports that it has  
5 considered the same and recommends that the bill be amended by striking out  
6 all after the enacting clause and inserting in lieu thereof the following:

7 Sec. 1. 10 V.S.A. chapter 168 is added to read:

8 CHAPTER 168. PRODUCT STEWARDSHIP

9 FOR PRIMARY BATTERIES

10 § 7581. DEFINITIONS

11 As used in this chapter:

12 (1) “Agency” means the Agency of Natural Resources.

13 (2) “Brand” means a name, symbol, word, or traceable mark

14 that identifies:

15 (A) a primary battery and attributes the primary battery to the owner  
16 or licensee of the brand as the producer; or

17 (B) a primary battery-containing product and attributes the primary  
18 battery to the owner or licensee of the primary battery-containing product as  
19 the producer.

20 (3) “Calendar year” means the period commencing January 1 and  
21 ending December 31 of the same calendar year.

Yellow highlighted language = change from previous draft

1           (4) “Collection rate” means a percentage by weight that each producer  
2           or stewardship organization collects by an established date. The collection rate  
3           shall be calculated by total weight based on the percentage of primary  
4           batteries, including primary batteries taken from primary battery-containing  
5           products, that are collected during a calendar year, as compared to the total  
6           weight of primary batteries, including those in primary battery-containing  
7           products, that were estimated to have been sold in the State by participating  
8           producers during the previous calendar year. Estimates of primary batteries  
9           sold in the State may be based on a reasonable pro rata calculation based on  
10           national sales.

11           (5) “Consumer” means any person who presents or delivers any number  
12           of primary batteries to a collection facility that is included in an approved  
13           primary battery stewardship plan.

14           (6) “Consumer product” means any product that is regularly used or  
15           purchased to be used for personal, family, or household purposes. “Consumer  
16           product” shall not mean a product regularly used or purchased for industrial or  
17           business use.

18           (7) “Discarded primary battery” means a primary battery that is no  
19           longer used for its manufactured purpose.

20           (8) “Easily removable” means readily detachable by a person without  
21           the use of tools or with the use of common household tools.

Yellow highlighted language = change from previous draft

1           (9) “Primary battery” means a nonrechargeable battery weighing two  
2           kilograms or less, including alkaline, carbon-zinc, and lithium metal batteries.

3           “Primary battery” shall not mean batteries intended for industrial, business-to-  
4           business, warranty or maintenance services, or non-personal use.

5           (10) “Primary battery-containing product” means a consumer product  
6           that contains a primary battery supplied in or packed with the product.

7           “Primary battery-containing product” shall not mean any of the following:

8                   (A) a primary battery that is sold in a computer; computer monitor;  
9                   device containing a cathode ray tube; printer; or television;

10                   (B) a primary battery that is not easily removable or is not intended  
11                   or designed to be removed from the product, other than by the  
12                   manufacturer; and

13                   (C) a primary battery that is sold or used in an implanted medical  
14                   device, as that term is defined in the federal Food, Drug, and Cosmetic Act,  
15                   21 U.S.C. § 321(h), as amended.

16           (11) “Primary battery stewardship organization” or “stewardship  
17           organization” means an organization appointed by one or more producers to  
18           act as an agent on behalf of a producer or producers to design, submit,  
19           implement and administer a primary battery stewardship plan under  
20           this chapter.

Yellow highlighted language = change from previous draft

1           (12) “Primary battery stewardship plan” or “plan” means a plan  
2           submitted to the Secretary pursuant to section 7584 of this title by an  
3           individual producer or a primary battery stewardship organization.

4           (13)(A) “Producer” means one of the following with regard to a primary  
5           battery or a primary battery-containing product that is sold, offered for sale, or  
6           distributed in the State:

7                   (i) a person who manufactures a primary battery, or a primary  
8                   battery-containing product, and who sells, offers for sale, or distributes that  
9                   primary battery, or that primary battery-containing product, in the State under  
10                  the person’s own name or brand;

11                   (ii) if subdivision (A)(i) of this subdivision (13) does not apply, a  
12                   person who owns or licenses a trademark or brand under which a primary  
13                   battery or primary battery-containing product is sold, offered for sale, or  
14                   distributed in the State, whether or not the trademark is registered; or

15                   (iii) if subdivisions (A)(i) and (ii) of this subdivision (13) do not  
16                   apply, a person who imports a primary battery or a primary battery-containing  
17                   product into the State for sale or distribution.

18                   (B) “Producer” shall not mean a person who manufactures, sells,  
19                   offers for sale or imports a primary battery-containing product in the State if  
20                   that person:

Yellow highlighted language = change from previous draft

1                    (i) affirms that it only uses primary batteries supplied by a  
2                    producer participating in an approved battery stewardship program; and

3                    (ii) reports to the Secretary the estimated number of primary  
4                    batteries in the person’s primary battery-containing products estimated to be  
5                    sold in the State. Estimates of primary batteries contained in primary  
6                    battery-containing products sold in the State may be based on a reasonable pro  
7                    rata calculation of national sales of the primary battery-containing products.

8                    (14) “Program” or “stewardship program” means the system for the  
9                    collection, transportation, recycling, and disposal of primary batteries  
10                   implemented pursuant to an approved primary battery stewardship plan.

11                   (15)(A) “Rechargeable battery” means:

12                   (i) one or more voltaic or galvanic cells, electrically connected to  
13                   produce electric energy and designed to be recharged and weighing less than  
14                   11 pounds; or

15                   (ii) a battery pack designed to be recharged that weighs less than  
16                   11 pounds and that is designed to provide less than 40 volts direct current.

17                   (B) “Rechargeable battery” shall not mean:

18                   (i) a battery that is not easily removable or is not intended or  
19                   designed to be removed from the covered product, other than by  
20                   the manufacturer;

21                   (ii) a battery that contains electrolyte as a free liquid; or

Yellow highlighted language = change from previous draft

1                    (iii) a battery or battery pack that employs lead-acid technology,  
2                    unless the battery or battery pack:  
3                    (I) is sealed;  
4                    (II) contains no liquid electrolyte; and  
5                    (III) is intended by its manufacturer to power a handheld device  
6                    or to provide uninterrupted backup electrical power protection for stationary  
7                    consumer products or stationary office equipment.

8                    (16) “Rechargeable battery steward” means a person who:  
9                    (A) manufactures a rechargeable battery or a rechargeable product  
10                   that is sold, offered for sale, or distributed in the State under its own  
11                   brand name;

12                   (B) owns or licenses a trademark or brand under which a  
13                   rechargeable battery or rechargeable product is sold, offered for sale, or  
14                   distributed in the State, whether or not the trademark is registered; or

15                   (C) if subdivisions (A) and (B) of this subdivision (16) do not apply,  
16                   imports a rechargeable battery or rechargeable product into the State for sale  
17                   or distribution.

18                   (17) “Rechargeable product” means a product that contains or is  
19                   packaged with a rechargeable battery at the time the product is sold, offered for  
20                   sale, or distributed in the State. “Rechargeable product” shall not mean:

Yellow highlighted language = change from previous draft

1           (A) a product from which a rechargeable battery is not easily  
2           removable or is not intended or designed to be removed from the product,  
3           other than by the manufacturer; or

4           (B) an implanted medical device, as that term is defined in the federal  
5           Food, Drug, and Cosmetic Act, 21 U.S.C. § 321(h), as amended.

6           (18) “Recycling” means any process by which discarded products,  
7           components, and by-products are transformed into new usable or marketable  
8           materials in a manner in which the original products may lose their identity,  
9           but does not include energy recovery or energy generation by means of  
10           combusting discarded products, components, and by products with or without  
11           other waste products.

12           (19) “Retailer” means a person who offers a primary battery or a  
13           primary battery-containing product for sale to any consumer or business at  
14           retail in the State through any means, including remote offerings such as sales  
15           outlets, catalogues, or an Internet website.

16           (20) “Secretary” means the Secretary of Natural Resources.

17           § 7582. SALE OF PRIMARY BATTERY OR PRIMARY

18           **BATTERY-CONTAINING PRODUCT**

19           (a) Sale prohibited. Except as set forth under subsections (c) and (d) of this  
20           section:

Yellow highlighted language = change from previous draft

1           (1) Beginning January 1, 2016, a producer of a primary battery shall not  
2 sell, offer for sale, or deliver to a retailer for subsequent sale a primary battery  
3 unless the producer has complied with the requirements of subsection (b) of  
4 this section.

5           (2) Beginning on July 1, 2016, a producer of a primary battery-  
6 containing product shall not sell, offer for sale, or deliver to a retailer for  
7 subsequent sale a primary battery-containing product unless the producer has  
8 complied with the requirements of subsection (b) of this section.

9           (b) Requirements for sale. No producer shall sell, offer for sale, or  
10 deliver to a retailer for subsequent sale a primary battery or a primary  
11 battery-containing product in the State unless:

12           (1) the producer or stewardship organization is implementing or is  
13 registered under an approved primary battery stewardship plan;

14           (2) the producer or stewardship organization has paid the fee under  
15 section 7590 of this title; and

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

19           (c) New producers.

20           (1) A producer of a primary battery who, after January 1, 2016, seeks to  
21 sell, offer for sale, or offer for promotional purposes in the State a primary

Yellow highlighted language = change from previous draft

1 battery not previously sold in State, shall notify the Secretary prior to selling or  
2 offering for sale or promotion a primary battery not covered by an approved  
3 stewardship plan.

4 (2) A producer of a primary battery-containing product who, after  
5 July 1, 2016, seeks to sell, offer for sale, or offer for promotional purposes in  
6 the State a primary battery-containing product not previously sold in the State,  
7 shall notify the Secretary prior to selling or offering for sale or promotion a  
8 primary battery-containing product not covered by an approved stewardship  
9 plan.

10 (3) The Secretary shall list a producer who supplies notice under this  
11 subsection as a “new producer” on the Agency’s website. A producer that  
12 supplies notice under this subsection shall have 90 days to either join an  
13 existing primary battery stewardship organization or to submit a primary  
14 battery stewardship plan for approval to the State.

15 (d) Exemption. A producer who annually sells, offers for sale, distributes,  
16 or imports in the State primary batteries or primary battery-containing products  
17 with a total retail value of less than \$500.00 shall be exempt from the  
18 requirements of this chapter.

Yellow highlighted language = change from previous draft

1     § 7583. PRIMARY BATTERY STEWARDSHIP ORGANIZATION;  
2             REQUIREMENTS; REGISTRATION

3             (a) Participation in a stewardship organization. A producer may meet the  
4             requirements of this chapter by participating in a primary battery stewardship  
5             organization that undertakes the producer’s responsibilities under sections  
6             7582, 7584, and 7585 of this title.

7             (b) Qualifications for a stewardship organization. To qualify as a  
8             stewardship organization under this chapter, an organization shall:

9                 (1) commit to assume the responsibilities, obligations, and liabilities of  
10                all producers participating in the stewardship organization;

11                (2) not create unreasonable barriers for participation by producers in the  
12                stewardship organization; and

13                (3) maintain a public website that lists all producers and producers’  
14                brands covered by the primary battery stewardship organization’s approved  
15                collection plan.

16             (c) Registration requirements.

17                (1) Beginning on March 1, 2015 and annually thereafter, a stewardship  
18                organization shall file a registration form with the Secretary. The Secretary  
19                shall provide the registration form to a stewardship organization. The  
20                registration form shall include:

Yellow highlighted language = change from previous draft

1           (A) a list of the producers participating in the stewardship  
2           organization;

3           (B) the name, address, and contact information of a person  
4           responsible for ensuring a producer’s compliance with this chapter;

5           (C) a description of how the stewardship organization **proposes to**  
6           **meet** the requirements of subsection (a) of this section, including any  
7           reasonable requirements for participation in the stewardship organization; and

8           (D) the name, address, and contact information of a person for a  
9           nonmember manufacturer to contact on how to participate in the stewardship  
10           organization to satisfy the requirements of this chapter.

11           (2) A renewal of a registration without changes may be accomplished  
12           through notifying the Secretary on a form provided by the Secretary.

13           (d) Primary battery-containing products; notification. Producers of a  
14           battery-containing product who choose to fulfill the requirements of this  
15           chapter by participation in a stewardship organization under subsection (a) of  
16           this section shall notify each product stewardship organization operating an  
17           approved program that the primary batteries contained within or packaged with  
18           their products are covered by a primary battery producer participating in a  
19           stewardship program, and shall provide the name of the products, as well as the  
20           identity of its primary battery supplier, brand, weight, chemistry, estimated  
21           number of batteries contained in, or packaged with, the products sold in the

Yellow highlighted language = change from previous draft

1 State, and such other details as the primary battery stewardship organization  
2 may reasonably require. A primary battery stewardship organization in which  
3 the primary battery supplier is participating shall, as part of the list submitted  
4 under subsection 7584(b) of this title, include the producer of the primary  
5 battery-containing product as a participant in its program, subject to any  
6 limitations or exceptions as may be indicated by the information submitted by  
7 the primary battery-containing product producer.

8 § 7584. PRIMARY BATTERY STEWARDSHIP PLAN

9 (a) Primary battery stewardship plan required.

10 (1) On or before June 1, 2015, each producer selling, offering for sale,  
11 or offering for promotional purposes a primary battery in the State shall  
12 individually or as part of a primary battery stewardship organization submit a  
13 primary battery stewardship plan to the Secretary for review.

14 (2) On or before January 1, 2016, each producer selling, offering for  
15 sale, or offering for promotional purposes a primary battery-containing product  
16 in the State shall individually or as part of a primary battery stewardship  
17 organization submit a primary battery stewardship plan to the Secretary for  
18 review.

19 (b) Primary battery stewardship plan; minimum requirements. Each  
20 primary battery stewardship plan shall include, at a minimum, all of the  
21 following elements:

Yellow highlighted language = change from previous draft

1           (1) List of producers and brands. Each primary battery stewardship plan  
2 shall list:

3           (A) all participating producers and contact information for each of  
4 the participating producers; and

5           (B) the brands of primary batteries covered by the plan.

6           (2) Free collection. Each primary battery stewardship plan shall provide  
7 for the free collection of primary batteries from consumers. A producer shall  
8 not refuse the collection of a primary battery based on the brand or  
9 manufacturer of the primary battery.

10           (3) Collection; convenience. Each primary battery stewardship  
11 plan shall:

12           (A) allow all retailers that sell primary batteries or primary  
13 battery-containing products covered under the plan and all certified solid waste  
14 management facilities to opt to be collection facility;

15           (B) provide, at a minimum, no fewer than two collection facilities in  
16 each county in the State that provide for collection throughout the year; and

17           (C) provide for the acceptance from a consumer of up to 100 batteries  
18 per visit. A collection facility may agree to accept more than 100 batteries per  
19 visit from a consumer.

20           (4) Method of disposition. Each primary battery stewardship plan shall  
21 include a description of the method that will be used to responsibly manage

Yellow highlighted language = change from previous draft

1 discarded primary batteries to ensure that the components of the discarded  
2 primary batteries, to the extent economically and technically feasible, are  
3 recycled.

4 (5) Roles and responsibilities. A primary battery stewardship plan shall  
5 list all key participants in the primary battery collection chain, including:

6 (A) the number and name of the collection facilities accepting  
7 primary batteries under the plan, including the address and contact information  
8 for each facility; and

9 (B) the name and contact information of a transporter or contractor  
10 collecting primary batteries from collection facilities.

11 (C) the name, address, and contact information of the recycling  
12 facilities that processes the collected primary batteries or primary  
13 battery-containing products.

14 (6) Education and outreach. A primary battery stewardship plan shall  
15 include an education and outreach program. The education and outreach  
16 program may include mass media advertising in radio or television broadcasts  
17 or newspapers publications of general circulation in the State, retail displays,  
18 articles in trade and other journals and publications, and other public  
19 educational efforts. The education and outreach program shall describe the  
20 outreach procedures that will be used to provide notice of the program to  
21 businesses, municipalities, certified solid waste management facilities,

Yellow highlighted language = change from previous draft

1 retailers, wholesalers, and haulers. At a minimum, the education and outreach  
2 program shall notify the public of the following:

3 (A) that there is a free collection program for all primary  
4 batteries; and

5 (B) the location of collection points and how to access the  
6 collection program.

7 (7) Reimbursement. A primary battery stewardship plan shall include a  
8 reimbursement procedure that is consistent with the requirements of section  
9 7592 of this title.

10 (8) Performance goal; collection rate. A primary battery stewardship  
11 plan shall include a collection rate for the primary batteries subject to the plan,  
12 provided that the program shall achieve a 25 percent collection rate two years  
13 from the initial implementation of the plan and a 50 percent collection rate five  
14 years from implementation of the plan. A producer or stewardship  
15 organization that achieves the collection rate in any given calendar year shall  
16 continue to provide collection services under this chapter and is not relieved of  
17 the obligations or requirements of this chapter.

18 (c) Implementation. A producer or a primary battery stewardship  
19 organization shall include provisions in the plan for the implementation of the  
20 program in conjunction with those retailers and certified solid waste  
21 management facilities acting as collection facilities under a program. No

Yellow highlighted language = change from previous draft

1 transportation or recycling cost shall be imposed on retailers or certified solid  
2 waste management facilities acting as collection facilities under a program. A  
3 producer or a primary battery stewardship organization shall provide retailers  
4 and certified solid waste management facilities acting as collection facilities  
5 products or equipment for setting up a collection point and for providing for  
6 the pickup of collected primary batteries, including arranging for the  
7 management of those primary batteries.

8 § 7585. ANNUAL REPORT; PLAN AUDIT

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

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

14 (2) the collection rate achieved in the prior calendar year under the  
15 primary battery stewardship plan;

16 (3) the locations for all collection points set up by the producers covered  
17 by the plan and contact information for each location;

18 (4) examples and description of educational materials used to increase  
19 collection;

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

21 (6) any material change to the primary battery stewardship plan; and

Yellow highlighted language = change from previous draft

1           (7) the cost of implementation of the program, including the costs of  
2           collection, recycling, education, and outreach.

3           (b) Plan audit. Once every five years, a producer or stewardship  
4           organization shall hire an independent third party to audit the plan and plan  
5           operation. The auditor shall examine the effectiveness of the program in  
6           collecting and recycling primary batteries. The independent auditor shall  
7           examine the cost-effectiveness of the program and compare it to that of  
8           collection programs for primary batteries in other jurisdictions. The  
9           independent auditor shall make recommendations to the Secretary on ways to  
10           increase program efficacy and cost-effectiveness.

11           § 7586. AGENCY RESPONSIBILITIES; APPROVAL OF PLANS

12           (a) Approval of plan. Within 90 days after receipt of a proposed  
13           stewardship plan, not including the time required for public comment under  
14           subsection (c) of this section, the Secretary shall determine whether the plan  
15           complies with the requirements of section 7584 of this title. If the Secretary  
16           determines that a plan complies with the requirements of section 7584 of this  
17           title, the Secretary shall notify the applicant of the plan approval in writing. If  
18           the Secretary rejects a plan, the Secretary shall notify the applicant in writing  
19           of the reasons for rejecting the plan. An applicant whose plan is rejected by  
20           the Secretary shall submit a revised plan to the Secretary within 45 days of  
21           receiving notice of rejection.

Yellow highlighted language = change from previous draft

1           (b) Plan amendment; changes. Any changes to a proposed stewardship  
2           plan shall be approved by the Secretary in writing. The Secretary, in his or her  
3           discretion or at the request of a producer, may require a producer or a primary  
4           battery stewardship organization to amend an approved plan.

5           (c) Public notice. The Secretary shall post all proposed and approved  
6           primary battery stewardship plans on the Agency’s website for 30 days from  
7           the date of submission, subject to the confidentiality provisions of section 7588  
8           of this title.

9           (d) Public input. The Secretary shall establish a process under which a  
10           primary battery stewardship plan, prior to plan approval or amendment, is  
11           available for public review and comment.

12           (e) Registrations. The Secretary shall accept, review, and approve or deny  
13           primary battery stewardship organization registrations submitted under section  
14           7583 of this title.

15           (f) Agency website. The Secretary shall maintain a website that includes  
16           the names of producers with approved plans or participation in approved plans.  
17           The website shall list all of an approved producer’s brands covered by the  
18           stewardship plan filed with the Secretary. The Secretary shall update  
19           information on the website within 10 days of receipt of notice of any change to  
20           the listed information.

Yellow highlighted language = change from previous draft

1        (g) Term of stewardship plan. A primary battery stewardship plan  
2        approved by the Secretary under this section shall have a term not to exceed  
3        five years, provided that the producer remains in compliance with the  
4        requirements of this chapter and the terms of the approved plan.

5        § 7587. RETAILER OBLIGATIONS

6        (a) Sale prohibited. Except as set forth under subsection (b) of this section,  
7        no retailer shall sell or offer for sale a primary battery on or after January 1,  
8        2016 or primary battery-containing product on or after July 1, 2016 unless the  
9        retailer has reviewed the Agency website required in subsection 7586(f) of  
10       this title to determine that the producer of the primary battery or primary  
11       battery-containing product is implementing an approved collection plan or is a  
12       member of a stewardship organization.

13       (b) Inventory exception; expiration or revocation of manufacturer  
14       registration. A retailer shall not be responsible for an unlawful sale of a  
15       primary battery or primary battery-containing product under this subsection if:

16                (1)(A) the retailer purchased the primary battery prior to January 1,  
17                2016 and sells the battery on or before January 1, 2017; or

18                (B) the retailer purchased the primary battery-containing product  
19                prior to July 1, 2016 and sells the product on or before July 1, 2017; or

20                (2) the producer's stewardship plan expired or was revoked, and the  
21        retailer took possession of the in-store inventory of primary batteries or

Yellow highlighted language = change from previous draft

1 primary battery-containing products prior to the expiration or revocation of the  
2 producer’s stewardship plan.

3 (c) Educational material. A producer or primary battery stewardship  
4 organization supplying primary batteries or primary battery-containing  
5 products to a retailer shall provide the retailer with educational materials  
6 describing collection opportunities for primary batteries. The retailer shall  
7 make the educational materials available to consumers.

8 § 7588. CONFIDENTIALITY OF SUBMITTED DATA

9 (a) Confidentiality of submitted reports and data. Reports and data  
10 submitted under this chapter shall be available for public inspection and  
11 copying, provided that:

12 (1) Information protected under the Uniform Trade Secrets Act, as  
13 codified under 9 V.S.A. chapter 143, or under the trade secret exemption under  
14 1 V.S.A. § 317(c)(9) shall not be available for public inspection and copying.

15 (2) The Secretary may publish information confidential under  
16 subdivision (1) of this section in a summary or aggregated form that does not  
17 directly or indirectly identify individual producers, distributors, or retailers.

18 (b) Omission of trade secret information. The Secretary may require, as a  
19 part of a report submitted under this chapter, that the producer or stewardship  
20 organization submit a report that does not contain trade secret information and  
21 is available for public inspection and review.

Yellow highlighted language = change from previous draft

1        (c) Total weight of batteries. The total weight of batteries collected under  
2        an approved primary battery stewardship plan is not confidential business  
3        information under the Uniform Trade Secrets Act, as codified under 9 V.S.A.  
4        chapter 143, and shall be subject to inspection and review under the Public  
5        Records Act, 1 V.S.A chapter 5, subchapter 3.

6        § 7589. ANTITRUST; CONDUCT AUTHORIZED

7        (a) Activity authorized. A producer, group of producers, or stewardship  
8        organization implementing or participating in an approved stewardship plan  
9        under this chapter for the collection, transport, processing, and end-of-life  
10       management of primary batteries are individually or jointly immune from  
11       liability for the conduct under State laws relating to antitrust, restraint of trade,  
12       unfair trade practices, and other regulation of trade or commerce under  
13       9 V.S.A. chapter 63, subchapter 1, to the extent that the conduct is reasonably  
14       necessary to plan, implement, and comply with the producer's, group of  
15       producers', or stewardship organization's chosen system for managing  
16       discarded primary batteries. This subsection shall also apply to conduct of a  
17       retailer or wholesaler participating in a producer or stewardship organization's  
18       approved plan when the conduct is necessary to plan and implement the  
19       producer's or stewardship organization's organized collection or recycling  
20       system for discarded batteries

Yellow highlighted language = change from previous draft

1        (b) Limitations on anti-trust activity. Subsection (a) of this section shall  
2        not apply to an agreement among producers, groups of producers, retailers,  
3        wholesalers, or stewardship organizations affecting the price of primary  
4        batteries or primary battery containing products or any agreement restricting  
5        the geographic area in which, or customers to whom, primary batteries or  
6        primary battery-containing products shall be sold.

7        § 7590. ADMINISTRATIVE FEE

8        (a) Fee assessed. A producer or stewardship organization shall pay a fee of  
9        \$15,000.00 annually for operation under a stewardship plan approved by the  
10       Secretary under section 7586 of this title.

11       (b) Disposition of fee. The fees collected under subsection (a) of this  
12       section shall be deposited in the environmental permit fund under  
13       3 V.S.A. § 2805.

14       § 7591. REIMBURSEMENT; AUTHORIZED

15       (a) Reimbursement authorized. When a producer or stewardship  
16       organization operating under an approved primary battery stewardship plan  
17       collects primary batteries or primary battery-containing products that are not  
18       listed under its approved plan, the collecting producer or stewardship  
19       organization shall be entitled to reimbursement from the producer of the  
20       collected primary battery or primary battery-containing product of direct costs  
21       per unit of weight incurred in collecting the batteries or products.

Yellow highlighted language = change from previous draft

1           (b) Reimbursement process.

2                   (1) A producer or stewardship organization that incurs reimbursable  
3 direct costs under subsection (a) of this section shall submit a request to the  
4 producer of the collected battery or primary battery-containing products.

5                   (2) A producer or primary battery stewardship organization that  
6 receives a request for reimbursement may, prior to payment and within 30 days  
7 of receipt of the request for reimbursement, request an independent audit of  
8 submitted reimbursement costs. The independent auditor shall be responsible  
9 for verifying the reasonableness of the reimbursement request, including the  
10 costs sought for reimbursement and the amount of reimbursement. If the  
11 independent audit confirms the reasonableness of the reimbursement request,  
12 the producer or primary battery stewardship organization requesting the audit  
13 shall pay the cost of the audit. If the independent audit indicates the  
14 reimbursement request was not reasonable, the producer or stewardship  
15 organization submitting the reimbursement request shall pay the cost of the  
16 audit.

17                   (c) Direct costs. Under this section, direct costs include costs of  
18 collection, transport, recycling, and other methods of approved disposition,  
19 plus an additional negotiated amount not to exceed 10 percent of the direct  
20 costs to reflect a reasonable contribution for indirect costs, including

Yellow highlighted language = change from previous draft

1 permitting fees, overhead, personnel costs, administration, insurance, legal or  
2 accounting costs, and costs of education and outreach.

3 § 7592. PRIVATE RIGHT OF ACTION

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

8 (1) the plaintiff producer or stewardship organization incurs more than  
9 \$3,000.00 in actual direct costs collecting, handling, recycling, or properly  
10 disposing of primary batteries sold or offered for sale in the State by  
11 another producer;

12 (2) the producer from whom damages are sought:

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

16 (B) does not operate an approved battery stewardship program in the  
17 State.

18 (b) Action against producer with an approved stewardship plan.

19 (1) A producer or primary battery stewardship organization  
20 implementing an approved plan in compliance with the requirements of this  
21 chapter may bring a civil action for damages against another producer or

Yellow highlighted language = change from previous draft

1 stewardship organization that is implementing an approved plan in the

2 State when:

3 (A) the plaintiff producer or stewardship organization submitted a  
4 reimbursement request to another producer or stewardship organization under  
5 section 7591 of this title;

6 (B) the plaintiff producer does not receive reimbursement within:

7 (i) 60 days of the request, if no independent audit is requested  
8 under section 7591 of this title; or

9 (ii) 30 days after completion of an audit if an independent audit is  
10 requested under section 7591 of this title and the audit confirms the validity of  
11 the reimbursement request.

12 (2) A civil action under this subsection may be brought against an  
13 individual producer only if the producer is implementing its own primary  
14 battery stewardship plan. A producer participating in an approved primary  
15 battery stewardship plan covering multiple producers shall not be sued  
16 individually for reimbursement. An action against a producer participating in a  
17 stewardship plan covering multiple producers shall be brought against the  
18 stewardship organization implementing the plan.

19 (c) Role of Agency. The Agency shall not be a party to or be required to  
20 provide assistance or otherwise participate in a civil action authorized under

Yellow highlighted language = change from previous draft

1 this section solely due to its regulatory requirements under this chapter, unless  
2 subject to subpoena before a court of jurisdiction.

3 (d) Damages; definitions. As used in this section, “damages” means:

4 (1) the actual, direct costs a plaintiff producer incurs in collecting,  
5 handling, recycling, or properly disposing of primary batteries reasonably  
6 identified as having originated from a noncompliant producer;

7 (2) exemplary damages not exceeding three times the costs incurred  
8 under subdivision (1) of this subsection; and

9 (3) the prevailing plaintiff producer’s attorney’s fees and costs of  
10 bringing the action.

11 § 7593. REIMBURSEMENT OF RECHARGEABLE BATTERY

12 STEWARDS

13 (a) Registration of rechargeable battery steward. A rechargeable battery  
14 steward shall register with the Secretary in order to seek reimbursement under  
15 subsection (b) of this section. The Secretary shall register a rechargeable  
16 battery steward upon:

17 (1) Submission by the rechargeable battery steward of a registration  
18 form, provided by the Secretary. The form shall include:

19 (A) a list of the producers participating in the rechargeable battery  
20 stewardship organization; and

Yellow highlighted language = change from previous draft

1           (B) the name, address, and contact information of a person  
2           responsible for implementing the rechargeable battery stewardship  
3           organization.

4           (2) Determination by the Secretary that the battery stewardship  
5           organization represents at least 10 percent of the manufacturers that sell  
6           rechargeable batteries in or into the State.

7           (b) Reimbursement of rechargeable battery stewards. A primary battery  
8           producer or primary battery stewardship organization shall reimburse operators  
9           of a registered rechargeable battery stewardship organization, or other person  
10           operating a registered rechargeable battery stewardship program, for actual  
11           direct costs per unit of weight incurred by the registered rechargeable battery  
12           stewardship organization in the collection of primary batteries of a producer  
13           participating in an approved primary battery stewardship program in the State.  
14           Direct costs include costs of collection, transport, recycling, and other methods  
15           of approved disposition, plus an additional negotiated amount not to exceed  
16           10 percent of direct costs to reflect a reasonable contribution for indirect costs,  
17           including permitting fees, overhead, personnel costs, administration, insurance,  
18           legal or accounting costs, and education and outreach.

19           (c) Request for audit. A producer or primary battery stewardship  
20           organization that receives a request for reimbursement from a rechargeable  
21           battery steward may, prior to payment and within 30 days of the request for

Yellow highlighted language = change from previous draft

1 reimbursement, request an independent audit of the requested reimbursement  
2 costs. The independent auditor shall be responsible for verifying the  
3 reasonableness of the reimbursement request, including the costs sought for  
4 reimbursement and the amount of reimbursement. If the independent audit  
5 confirms the reasonableness of the reimbursement request, the producer or  
6 primary battery stewardship organization requesting the audit shall pay the cost  
7 of the audit. If the independent audit indicates the reimbursement request was  
8 not reasonable, the producer or stewardship organization submitting the  
9 reimbursement request shall pay the cost of the audit.

10 (d)(1) Civil action for failure to reimburse. A rechargeable battery steward  
11 or other person operating a registered program to collect used rechargeable  
12 batteries for recycling in the State may bring a civil action for damages against  
13 a primary battery producer or primary battery stewardship organization that is  
14 implementing an approved plan in the State when:

15 (A) the rechargeable battery steward submitted a reimbursement  
16 request to another producer or stewardship organization under subsection (b)  
17 of this section;

18 (B) the rechargeable battery steward does not receive  
19 reimbursement within:

20 (i) 60 days of the request, if no independent audit is requested  
21 under subsection (c) of this section; or

Yellow highlighted language = change from previous draft

1                   (ii) 30 days after completion of an audit if an independent audit is  
2 requested under subsection (c) of this section and the audit confirms the  
3 validity of the reimbursement request.

4                   (2) A civil action under this subsection may be brought against an  
5 individual primary battery producer only if the producer is implementing its  
6 own primary battery stewardship plan or the producer has failed to register to  
7 participate in a plan. A primary battery producer participating in an approved  
8 primary battery stewardship plan covering multiple producers shall not be sued  
9 individually for reimbursement. An action against a primary battery producer  
10 participating in a stewardship plan covering multiple producers shall be  
11 brought against the stewardship organization implementing the plan.

12                   (e) Procedure; registered rechargeable battery stewardship program. The  
13 Secretary may require a primary battery producer or a primary battery  
14 stewardship organization to submit the procedure for reimbursement under this  
15 section to the Secretary for approval.

16                   (f) Role of Agency. The Agency shall not be required to provide assistance  
17 or otherwise participate in a reimbursement request, audit, or civil action  
18 authorized under this section, unless subject to subpoena before a court of  
19 jurisdiction.

20



Yellow highlighted language = change from previous draft

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17

\* \* \*

(Q) chapter 164A (collection and disposal of mercury-containing lamps).

(R) chapter 32 (flood hazard areas).

(S) chapter 168 (collection and disposal of primary batteries).

(2) 29 V.S.A. chapter 11 (management of lakes and ponds).

(3) 24 V.S.A. chapter 61, subchapter 10 (relating to salvage yards).

Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: \_\_\_\_\_)

\_\_\_\_\_

Representative [surname]

FOR THE COMMITTEE