

1 S.312

2 Introduced by Senators Lyons and Mullin

3 Referred to Committee on

4 Date:

5 Subject: Conservation and development; solid waste; extended producer  
6 responsibility principles; batteries

7 Statement of purpose of bill as introduced: This bill proposes to establish  
8 minimum principles for the enactment of extended producer responsibility  
9 programs in the State. The bill also proposes to establish a product  
10 stewardship program for discarded batteries.

11 An act relating to extended producer responsibility

12 It is hereby enacted by the General Assembly of the State of Vermont:

13 Sec. 1. 10 V.S.A. chapter 159, subchapter 5 is added to read:

14 Subchapter 5. Extended Producer Responsibility

15 § 6691. DEFINITIONS

16 As used in this subchapter:

17 (1) “Extended producer responsibility” or “EPR” means a type of product  
18 stewardship that requires a producer of a consumer product to assume  
19 responsibility for the postconsumer management of the product and its packaging.

1           (2) “Extended producer responsibility programs” or “EPR programs”  
2           means any program established by an act of the General Assembly that requires  
3           the producer of a consumer product to assume the responsibility for the  
4           postconsumer management of the product and its packaging.

5           (3) “Producer” means a producer of a consumer product selling a product  
6           covered by an EPR program enacted in the State.

7           (4) “Product Stewardship” is the act of minimizing health, safety,  
8           environmental, and social impacts of a consumer product and its packaging  
9           through all stages of the life cycle of the product while also maximizing the  
10          economic benefit of the product and its packaging.

11          (5) “Secretary” means the Secretary of Natural Resources.

12          (6) “Stewardship program” means the criteria that a producer shall  
13          implement under an EPR program.

14          § 6692. EXTENDED PRODUCER RESPONSIBILITY PRINCIPLES

15          (a) Purpose. It is the purpose of this subchapter to provide the principles that  
16          all extended producer responsibility programs enacted on or after July 1, 2014  
17          shall be required to comply with in the State of Vermont.

18          (b) Principles. An EPR program enacted on or after July 1, 2014 shall comply  
19          with the following required principles:

20               (1) Producer responsibility. An EPR program shall require, as a condition  
21               of sale, that a producer selling a product that is covered under the EPR  
22               program in or into the State assume responsibility for designing, managing,

1 and financing a stewardship program that addresses the life cycle impacts of its  
2 products including end-of-life management. A producer shall be required to  
3 finance the EPR program as a general cost of doing business, through cost  
4 internalization or by recovering costs through arrangements with its  
5 distributors and retailers. End-of-life fees are not allowed, and the costs of  
6 product management shall not be shifted from the producer to taxpayers or  
7 consumers.

8 (2) Equity of application. An EPR program shall apply to all producers  
9 within a particular product category. All producers in the product category  
10 shall be subject to the same EPR requirements, whether they choose to meet  
11 them individually or jointly with other producers. All stewardship programs  
12 within a product category shall be required to meet the same goals and  
13 performance standards established by the Secretary.

14 (3) Performance based; flexibility. An EPR program shall include  
15 performance goals that a producer must meet over the life of the program. The  
16 EPR program shall allow producers necessary flexibility to design the product  
17 management system to meet the performance goals established by government,  
18 provided that:

19 (A) producer-managed systems shall follow the resource  
20 conservation hierarchy of reduce, reuse, recycle, and beneficially use, as  
21 appropriate; and

1           (B) producers shall be required to provide public education programs  
2 to ensure achievement of performance goals and established standards.

3           (4) Producer plan. An EPR program shall provide producers the ability to  
4 meet the requirements of the EPR program by offering the producer's own  
5 plan or participating in a plan with other producers.

6           (5) End-of-life management. An EPR program shall be required to  
7 address the end-of-life management of the relevant consumer product. A  
8 producer, individually or as part of a stewardship organization, shall finance  
9 the collection, transportation, and responsible reuse, recycling, or disposition  
10 of all new, historic, and orphan consumer products covered by the EPR  
11 program.

12           (6) Convenience. An EPR program shall provide convenient collection  
13 for consumers throughout the State. A producer, individually or as part of a  
14 stewardship organization, shall be authorized, but not required, to use existing  
15 collection and processing infrastructure in meeting convenience and collection  
16 requirements.

17           (7) Environmental responsibility. Under an EPR program, consumer  
18 products shall be managed in a manner that is protective of human health and  
19 the environment.

20           (8) Retailer responsibility. Under an EPR program, retailers shall be  
21 authorized to sell covered brands of consumer products only from producers

1 who are participating in a stewardship program that is in compliance with the  
2 EPR program's requirements.

3 (9) Government oversight. An EPR program shall be designed to be  
4 operated by producers with minimal involvement from the Secretary or other  
5 State governmental entities. The Secretary shall set goals and performance  
6 standards following consultation with stakeholders. The Secretary shall ensure  
7 equity of application of the EPR program to all producers in a product  
8 category. The Secretary shall ensure transparency and accountability of  
9 stewardship programs under an EPR program.

10 § 6693. APPLICABILITY

11 The requirements of this subchapter shall apply to the following extended  
12 producer responsibility programs:

13 (1) The product stewardship program for batteries under chapter 168 of  
14 this title; and

15 (2) [Reserved].

16 Sec. 2. 10 V.S.A. chapter 168 is added to read:

17 CHAPTER 168. PRODUCT STEWARDSHIP

18 FOR PRIMARY BATTERIES

19 § 7581. DEFINITIONS

20 As used in this chapter:

21 (1) "Agency" means the Agency of Natural Resources.

1           (2) “Brand” means a name, symbol, word, or traceable mark that  
2           identifies:

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

5                   (B) a primary battery-containing product and attributes the primary  
6                   battery to the owner or licensee of the primary battery-containing product as  
7                   the producer.

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

10           (4) “Collection rate” means a percentage by weight that each producer  
11           or stewardship organization is required to collect by an established date. The  
12           collection rate shall be calculated by weight based on the percentage of  
13           primary batteries, including primary batteries taken from primary  
14           battery-containing products, that are collected during a calendar year, as  
15           compared to the average weight of primary batteries that were estimated to  
16           have been sold in the State by participating producers during the three previous  
17           calendar years. Estimates of primary batteries sold in the State may be based  
18           on a reasonable pro rata calculation based on national sales.

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

1           (6) “Discarded primary battery” means a primary battery that is no  
2 longer used for its manufactured purpose.

3           (7) “Easily removable” means readily detachable by a person without  
4 the use of tools or with the use of common household tools.

5           (8) “Primary battery” means a nonrechargeable battery weighing two  
6 kilograms or less, including alkaline, carbon-zinc, lithium metal, and other  
7 batteries typically generated as waste.

8           (9) “Primary battery-containing product” means a primary battery  
9 contained in or packed with products such as cameras, watches, calculators,  
10 flashlights, lanterns, portable radios, toys, and clocks. “Primary  
11 battery-containing product” shall not mean any of the following:

12           (A) a primary battery that is sold in a covered electronic device, as  
13 defined in subdivision 7551(8) of this title;

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

17           (C) a primary battery that is sold or used in an implanted medical  
18 device, as that term is defined in the federal Food, Drug, and Cosmetic Act,  
19 21 U.S.C. § 321(h), as amended.

20           (10) “Primary battery stewardship organization” or “stewardship  
21 organization” means an organization appointed by one or more producers to

1 act as an agent on behalf of a producer or producers to design, submit,  
2 implement and administer a primary battery stewardship plan under this  
3 chapter.

4 (11) “Primary battery stewardship plan” or “plan” means a plan  
5 submitted to the Secretary pursuant to section 7583 of this title by an  
6 individual producer or a primary battery stewardship organization.

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

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

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

18 (iii) if subdivisions (A)(i) and (ii) of this subdivision (12) do not  
19 apply, a person who imports a primary battery or a primary battery-containing  
20 product into the State for sale or distribution.



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

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

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

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

14                  (14)(A) “Rechargeable battery” means:

15                   (i) one or more voltaic or galvanic cells, electrically connected to  
16                   produce electric energy and designed to be recharged and weighing less than  
17                   11 pounds; or

18                   (ii) a battery pack designed to be recharged that weighs less than  
19                   11 pounds and that is designed to provide less than 40 volts direct current.

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

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

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

5           (iii) a battery or battery pack that employs lead-acid technology,  
6 unless the battery or battery pack:

7                   (I) is sealed;

8                   (II) contains no liquid electrolyte; and

9                   (III) is intended by its manufacturer to power a handheld device  
10 or to provide uninterrupted backup electrical power protection for stationary  
11 consumer products or stationary office equipment.

12           (15) “Rechargeable battery steward” means a person who:

13                   (A) manufactures a rechargeable battery or a rechargeable product  
14 that is sold, offered for sale, or distributed in the State under its own brand  
15 name;

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

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

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

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

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

9           (17) “Recycling” means the process of collecting and preparing  
10           recyclable materials to the extent practicable and reusing the materials in their  
11           original form or using them in manufacturing processes that do not cause the  
12           destruction of recyclable materials in a manner that precludes further use.

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

17           (19) “Secretary” means the Secretary of Natural Resources.

1     § 7582. SALE OF PRIMARY BATTERY OR PRIMARY BATTERY-  
2             CONTAINING PRODUCT; STEWARDSHIP ORGANIZATION  
3             REGISTRATION

4             (a) Sale prohibited. Beginning July 1, 2015, except as set forth under  
5             subsections (c) and (d) of this section, a producer of a primary battery or  
6             primary battery-containing product shall not sell, offer for sale, or deliver to a  
7             retailer for subsequent sale a primary battery or primary battery-containing  
8             product unless all of the following has been met:

9                 (1) the producer is implementing an approved primary battery  
10             stewardship plan;

11                 (2) the producer has paid the fee under section 7591 of this title; and

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

15             (b) Primary battery stewardship organization registration requirements.

16             Beginning January 1, 2015, and annually thereafter, a stewardship organization  
17             shall file a registration form with the Secretary. The Secretary shall provide  
18             the registration form to a stewardship organization. The registration form shall  
19             include:

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

1           (2) the name, address, and contact information of a person responsible  
2 for ensuring the producer's compliance with this chapter; and

3           (3) a description of how the stewardship organization meets the  
4 requirements of subsection (a) of this section, including any reasonable  
5 requirements for participation in the stewardship organization.

6           (c) New producers. A producer who, after January 1, 2015, seeks to sell,  
7 offer for sale, or offer for promotional purposes in the State a primary battery  
8 or primary battery-containing product not previously sold in State, shall notify  
9 the Secretary prior to selling or offering a product not covered by a  
10 stewardship plan in the State. The Secretary shall list a producer who supplies  
11 notice under this subsection as a "new producer" on the Agency's website. A  
12 producer that supplies notice under this subsection shall have 90 days to either  
13 join an existing primary battery stewardship organization or to submit a  
14 primary 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.

19           § 7583. PRIMARY BATTERY STEWARDSHIP PLAN

20           (a) Primary battery stewardship plan required. On or before January 1,  
21 2015, each producer selling, offering for sale, or offering for promotional

1 purposes a primary battery or primary-containing product in the State shall  
2 individually or as part of a primary battery stewardship organization submit a  
3 primary battery stewardship plan to the Secretary for review.

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

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

9 (A) all participating producers and contact information for each of  
10 the participating producers; and

11 (B) the brands of primary batteries and primary battery-containing  
12 products covered by the plan.

13 (2) Collection rate. The primary battery stewardship plan shall include  
14 the collection rate of primary batteries collected during the previous  
15 calendar year.

16 (3) Free collection. Each primary battery stewardship plan shall provide  
17 for the free collection of primary batteries and primary battery-containing  
18 products from consumers. A producer shall accept all primary batteries and  
19 primary battery containing products from a consumer and shall not refuse the  
20 collection of a primary battery or primary battery-containing product based on

1 the brand or manufacturer of the primary battery or primary battery-containing  
2 product.

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

5 (A) allow all retailers that sell primary batteries or primary  
6 battery-containing products covered under the plan and all municipalities to  
7 opt to be collection facility;

8 (B) provide, at a minimum, no fewer than two collection facilities in  
9 each county in the State; and

10 (C) provide for the acceptance from a consumer of up to 20 batteries  
11 per visit. A collection site may agree to accept more than 20 batteries per visit  
12 from a consumer.

13 (5) Method of disposition. Each primary battery stewardship plan shall  
14 include a description of the method that will be used to responsibly manage  
15 discarded primary batteries to ensure that the components of the discarded  
16 primary batteries, to the extent economically and technically feasible, are  
17 recycled or otherwise managed responsibly.

18 (6) Roles and responsibilities. A primary battery stewardship plan shall  
19 list all key participants in the primary battery distribution chain, including:

1           (A) the number and name of the collection facilities accepting  
2 primary batteries or primary battery-containing products under the plan,  
3 including the address and contact information for each facility; and

4           (B) the name and contact information of a transporter or contractor  
5 collecting primary batteries or primary battery-containing products from  
6 collection facilities.

7           (7) Education and outreach. A primary battery stewardship plan shall  
8 include an education and outreach program designed to achieve the collection  
9 rate in the plan. The education and outreach program may include media  
10 advertising, retail displays, articles in trade and other journals and publications,  
11 and other public educational efforts. The education and outreach program  
12 shall describe the outreach procedures that will be used to provide notice of the  
13 program to businesses, municipalities, retailers, wholesalers, and haulers. At a  
14 minimum, the education and outreach program shall notify the public of the  
15 following:

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

18           (B) the location of collection points and how to access the collection  
19 program.



1           (8) Reimbursement.

2           (A) A primary battery stewardship plan shall include a procedure  
3           under which the producer or stewardship organization submitting the plan shall  
4           reimburse another operator of a primary battery stewardship organization for  
5           the actual direct costs per unit of weight incurred in collecting the brands or  
6           products of the producer submitting the plan. Direct costs include costs of  
7           collection, transport, recycling and other actual environmental management  
8           costs, plus an additional negotiated amount not to exceed 10 percent to reflect  
9           a reasonable contribution for indirect costs, including permitting fees,  
10          overhead, personnel costs, administration, insurance, legal or accounting costs,  
11          education and outreach, or any other costs.

12          (B) A producer or primary battery stewardship organization that  
13          receives a request for reimbursement may, prior to payment and within 30 days  
14          of receipt of the request for reimbursement, request an independent audit of  
15          submitted reimbursement costs. If the independent audit confirms the  
16          reasonableness of the reimbursement request, the producer or primary battery  
17          stewardship organization requesting the audit shall pay the cost of the audit.

18          (c) Implementation. A producer or a primary battery stewardship  
19          organization shall elect to include provisions in the plan for the implementation  
20          of the program in conjunction with those retailers and municipalities acting as  
21          collection facilities under a program. Implementation of the program shall be

1 at no cost to retailers or municipalities acting as collection facilities under a  
2 program. A producer or a primary battery stewardship organization shall  
3 provide retailers and municipalities acting as collection facilities products or  
4 equipment for setting up a collection point and for providing for the pickup of  
5 collected primary batteries, including arranging for the disposal of those  
6 primary batteries.

7 § 7584. ADJUSTMENTS TO COLLECTION RATE

8 A producer or primary battery stewardship organization may petition the  
9 Secretary for an adjustment to the collection rate specified in the primary  
10 battery stewardship plan. The Secretary may grant an adjustment to the  
11 collection rate if the Secretary determines that technological, ecological,  
12 cultural, economic, or other impediments or circumstances that are beyond the  
13 control of the producer or primary battery stewardship organization limit the  
14 ability to achieve the collection rate.

15 § 7585. ANNUAL REPORT; PLAN AUDIT

16 (a) Annual report. On or before February 15, 2016, and annually  
17 thereafter, a producer or a primary battery stewardship organization shall  
18 submit a report to the Secretary that contains the following:

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

21 (2) the collection rate achieved in the prior calendar year;

1           (3) an estimate of total sales data by weight for primary batteries sold in  
2 the State for the previous three calendar years;

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

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

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

8           (7) an explanation of why collection targets were not met, if  
9 necessary; and

10           (8) any material change to the primary battery stewardship plan.

11           (b) Plan audit. Once every five years, a producer or stewardship  
12 organization shall hire an independent third party to audit the plan and plan  
13 operation. The auditor shall examine the effectiveness of the program in  
14 collecting and recycling of primary batteries. The independent auditor shall  
15 examine the cost-effectiveness of the program and compare it to that of  
16 collection programs for primary batteries in other jurisdictions. The  
17 independent auditor shall make recommendations to the Secretary on ways to  
18 increase program efficacy and cost-effectiveness.

1     § 7586. 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, 7583, 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 January 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:

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 meets the  
6           requirements of subsection (a) of this section, including any reasonable  
7           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

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 7583(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 § 7587. AGENCY RESPONSIBILITIES; APPROVAL OF PLANS

9 (a) Approval of plan. Within 90 days after receipt of a proposed  
10 stewardship plan, the Secretary shall determine whether the plan complies with  
11 the requirements of section 7584 of this title. If the Secretary approves a plan,  
12 the Secretary shall notify the applicant of the plan approval in writing. If the  
13 Secretary rejects a plan, the Secretary shall notify the applicant in writing of  
14 the reasons for rejecting the plan. An applicant whose plan is rejected by the  
15 Secretary shall submit a revised plan to the Secretary within 45 days of  
16 receiving notice of rejection.

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

1       (c) Public notice. The Secretary shall post all proposed and approved  
2       primary battery stewardship plans on the Agency's website, subject to the  
3       confidentiality provisions of section 7588 of this title.

4       (d) Public input. The Secretary shall establish a process under which a  
5       primary batter stewardship plan is, prior to plan approval or amendment,  
6       available for public review and comment.

7       (e) Registrations. The Secretary shall accept, review, and approve or deny  
8       primary battery stewardship organization registrations submitted under section  
9       7583 of this title.

10       (f) Agency website. The Secretary shall maintain a website that includes  
11       the names of producers with approved plans or participation in approved plans.  
12       The website shall list all of an approved producer's brands covered by the  
13       stewardship plan filed with the Secretary. The Secretary shall update  
14       information on the website within 10 days of any change to the listed  
15       information.

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

1     § 7588. RETAILER OBLIGATIONS

2           (a) Sale prohibited. Except as set forth under subsection (b) of this section,  
3     beginning July 1, 2015, no retailer shall sell or offer for sale a primary battery  
4     or primary battery-containing product unless the retailer has reviewed the  
5     Agency website required in subsection 7587(f) of this title to determine that  
6     the producer of the primary battery or primary battery-containing product is  
7     implementing an approved collection plan or is a member of a stewardship  
8     organization.

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

12           (1) the retailer purchased the primary battery or primary  
13    battery-containing product prior to July 1, 2015 and sells the battery or product  
14    on or before July 1, 2017; or

15           (2) the producer's stewardship plan expired or was revoked, and the  
16    retailer took possession of the in-store inventory of primary batteries or  
17    primary battery-containing products prior to the expiration or revocation of the  
18    producer's stewardship plan.



1     § 7589. CONFIDENTIALITY OF SUBMITTED DATA

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

5             (1) Information protected under the Uniform Trade Secrets Act, as  
6             codified under 9 V.S.A. chapter 143, or under the trade secret exemption under  
7             1 V.S.A. § 317(c)(9) shall not be available for public inspection and copying.

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

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

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

1     § 7590. ANTITRUST; CONDUCT AUTHORIZED

2         (a) Activity authorized. A producer or stewardship organization that  
3         organizes collection, transport, and processing of primary batteries under this  
4         chapter is immune from liability for the conduct under State laws relating to  
5         antitrust, restraint of trade, unfair trade practices, and other regulation of trade  
6         or commerce only to the extent that the conduct is necessary to plan and  
7         implement the producer's or stewardship organization's chosen organized  
8         collection or recycling system for discarded batteries.

9         (b) Limitations on anti-trust activity. Subsection (a) of this section shall  
10         not apply to an agreement among producers or stewardship organizations  
11         affecting the price of primary batteries or primary battery containing products  
12         or any agreement restricting the geographic area in which, or customers to  
13         whom, primary batteries or primary battery-containing products shall be sold.

14     § 7591. ADMINISTRATIVE FEE

15         (a) Fee assessed. A producer or stewardship organization shall pay a fee of  
16         \$15,000.00 annually for operation under a stewardship plan approved by the  
17         Secretary under section 7587 of this title.

18         (b) Disposition of fee. The fees collected under subsection (a) of this  
19         section shall be deposited in the environmental permit fund under 3 V.S.A.

20     § 2805.

1     § 7592. PRIVATE RIGHT OF ACTION

2           (a) A producer or a primary battery stewardship organization implementing  
3     an approved plan in compliance with the requirements of this chapter may  
4     bring a civil action against another producer or stewardship organization for  
5     damages when:

6           (1) the plaintiff producer or stewardship organization incurs more than  
7     \$3,000.00 in actual direct costs collecting, handling, recycling, or properly  
8     disposing of primary batteries sold or offered for sale in the State by another  
9     producer;

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

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

14           (B) does not operate an approved battery stewardship program in the  
15     State; and

16           (b)(1) A producer or primary battery stewardship organization  
17     implementing an approved plan in compliance with the requirements of this  
18     chapter may bring a civil action for damages against another producer or  
19     stewardship organization that is implementing an approved plan in the State  
20     when:

1           (A) the plaintiff producer or stewardship organization submitted a  
2 reimbursement request to another producer or stewardship organization under  
3 the procedure approved under subdivision 7583(b)(8) of this title;

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

5           (i) 60 days of the request, if no independent audit is requested  
6 under the procedure approved under subdivision 7583(b)(8) of this title; or

7           (ii) 30 days after completion of an audit if an independent audit is  
8 requested under the procedure approved under subdivision 7583(b)(8) of this  
9 title and the audit confirms the validity of the reimbursement request.

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

17          (c) As used in this section, “damages” means:

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

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

3           (3) the prevailing plaintiff producer's attorney's fees and costs of  
4           bringing the action.

5           § 7593. REIMBURSEMENT OF RECHARGEABLE BATTERY

6           STEWARDS

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

20           (b) Request for audit. A producer or primary battery stewardship  
21           organization that receives a request for reimbursement from a rechargeable

1 battery steward may, prior to payment and within 30 days of the request for  
2 reimbursement, request an independent audit of the requested reimbursement  
3 costs. If the independent audit confirms the reasonableness of the  
4 reimbursement request, the producer or primary battery stewardship  
5 organization requesting the audit shall pay the cost of the audit.

6 (c)(1) Civil action for failure to reimburse. A rechargeable battery steward  
7 or other person operating a bona fide program to collect used rechargeable  
8 batteries for recycling in the State may bring a civil action for damages against  
9 a primary battery producer or primary battery stewardship organization that is  
10 implementing an approved plan in the State when:

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

14 (B) the rechargeable battery steward does not receive reimbursement  
15 within:

16 (i) 60 days of the request, if no independent audit is requested  
17 under subsection (b) of this section; or

18 (ii) 30 days after completion of an audit if an independent audit is  
19 requested under subsection (b) of this section and the audit confirms the  
20 validity of the reimbursement request.

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

9           (d) Procedure; bona fide rechargeable battery stewardship program.

10           (1) The Secretary may require a primary battery producer or a primary  
11 battery stewardship organization to submit the procedure for reimbursement  
12 under this section to the Secretary for approval.

13           (2) The Secretary, in his or her discretion, shall approve a rechargeable  
14 battery stewardship program as bona fide under this section.

15           § 7594. PENALTIES

16           A producer who violates the requirements of this chapter shall be subject to  
17 a civil penalty not to exceed \$1,000.00 per day for each day of noncompliance.

18           § 7595. RULEMAKING; PROCEDURE

19           The Secretary may adopt rules or procedures to implement the requirements  
20 of this chapter.





1 (R) chapter 32 (flood hazard areas).

2 (S) chapter 168 (extended producer responsibility for batteries).

3 (2) 29 V.S.A. chapter 11 (management of lakes and ponds).

4 (3) 24 V.S.A. chapter 61, subchapter 10 (relating to salvage yards).

5 Sec. 5. EFFECTIVE DATE

6 This act shall take effect on passage.