

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 Subchapter 1. Definitions

11 § 7581. DEFINITIONS

12 As used in this chapter:

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

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

15 that identifies:

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

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

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

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

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

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

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

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

3           (9) “Primary battery” means a nonrechargeable battery weighing  
4           two kilograms or less, including alkaline, carbon-zinc, and lithium metal  
5           batteries. “Primary battery” shall not mean batteries intended for industrial,  
6           business-to-business, warranty or maintenance services, or nonpersonal use.

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

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

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

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

14           (C) a primary battery that is sold or used in an implanted medical  
15           device, as that term is defined in the federal Food, Drug, and Cosmetic Act,  
16           21 U.S.C. § 321(h), as amended.

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

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

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

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

2                   (i) one or more voltaic or galvanic cells, electrically connected to  
3           produce electric energy and designed to be recharged and weighing less than  
4           11 pounds; or

5                   (ii) a battery pack designed to be recharged that weighs less than  
6           11 pounds and that is designed to provide less than 40 volts direct current.

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

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

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

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

14                   (I) is sealed;

15                   (II) contains no liquid electrolyte; and

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

1           (16) “Rechargeable battery stewardship organization” means a person  
2           who:

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

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

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

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

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

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

20          (18) “Recycling” means any process by which discarded products,  
21          components, and by-products are transformed into new usable or marketable

1 materials in a manner in which the original products may lose their identity,  
2 but does not include energy recovery or energy generation by means of  
3 combusting discarded products, components, and by products with or without  
4 other waste products.

5 (19) “Retailer” means a person who offers a primary battery for sale to  
6 any consumer or business at retail in the State through any means, including  
7 remote offerings such as sales outlets, catalogues, or an Internet website.

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

9 Subchapter 2. Primary Battery Stewardship Program

10 § 7582. SALE OF PRIMARY BATTERIES

11 (a) Sale prohibited. Except as set forth under subsections (c) and (d) of this  
12 section, beginning on January 1, 2016, a producer of a primary battery shall  
13 not sell, offer for sale, or deliver to a retailer for subsequent sale a primary  
14 battery unless the producer has complied with the requirements of subsection  
15 (b) of this section.

16 (b) Requirements for sale. No producer shall sell, offer for sale, or  
17 deliver to a retailer for subsequent sale a primary battery in the State unless:

18 (1) the producer or stewardship organization is registered under an  
19 approved and implemented primary battery stewardship plan;

20 (2) the producer or stewardship organization has paid the fee under  
21 section 7596 of this title; and

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

4           (c) New producers.

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

10           (2) 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, not including the time  
13           required for public comment under subsection 7586(c) of this section, to either  
14           join an existing primary battery stewardship organization or submit a primary  
15           battery stewardship plan for approval to the State.

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



1     § 7583. PRIMARY BATTERY STEWARDSHIP ORGANIZATION;

2             REQUIREMENTS; REGISTRATION

3             (a) Participation in a stewardship organization. A producer of primary  
4             batteries may meet the requirements of this chapter by participating in a  
5             primary battery stewardship organization that undertakes the producer's  
6             responsibilities under sections 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:

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          § 7584. PRIMARY BATTERY STEWARDSHIP PLAN

14          (a) Primary battery stewardship plan required. On or before June 1, 2015,  
15          each producer selling, offering for sale, or offering for promotional purposes a  
16          primary battery in the State shall individually or as part of a primary battery  
17          stewardship organization submit a primary battery stewardship plan to the  
18          Secretary for 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:

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 producer of  
9 the primary battery.

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

12           (A) Allow all retailers that sell primary batteries covered under the  
13 plan, all municipalities, and all certified solid waste management facilities to  
14 opt to be a 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.

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

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.

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

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 7591 of this title.

10 (8) Performance goal; collection rate. A primary battery stewardship  
11 plan shall include a collection rate performance goal for the primary batteries  
12 subject to the plan.

13 (c) Implementation. A producer or a primary battery stewardship  
14 organization shall include provisions in the plan for the implementation of the  
15 program in conjunction with those retailers, municipalities, and certified solid  
16 waste management facilities acting as collection facilities under a program.

17 No transportation or recycling cost shall be imposed on retailers,  
18 municipalities, or certified solid waste management facilities acting as  
19 collection facilities under a program. A producer or a primary battery  
20 stewardship organization shall provide retailers, municipalities, and certified  
21 solid waste management facilities acting as collection facilities products or

1 equipment for setting up a collection point and for providing for the pickup of  
2 collected primary batteries, including arranging for the management of those  
3 primary batteries.

4 § 7585. ANNUAL REPORT; PLAN AUDIT

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

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

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

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

14 (4) examples and description of educational materials used to increase  
15 collection;

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

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

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

20 (b) Plan audit. Once every five years, a producer or stewardship  
21 organization shall hire an independent third party to audit the plan and plan

1 operation. The auditor shall examine the effectiveness of the program in  
2 collecting and recycling primary batteries. The independent auditor shall  
3 examine the cost-effectiveness of the program and compare it to that of  
4 collection programs for primary batteries in other jurisdictions. The  
5 independent auditor shall submit the results of the audit to the Secretary as part  
6 of the annual report required under subsection (a) of this section.

7 § 7586. AGENCY RESPONSIBILITIES; APPROVAL OF PLANS

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

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 primary battery  
6        stewardship plans on the Agency’s website for 30 days from the date of  
7        submission, subject to the confidentiality provisions of section 7594 of this  
8        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 a  
16       copy of all approved plans, the names of producers with approved plans,  
17       participation in approved plans, or other compliance with this chapter. The  
18       website shall list all of an approved producer’s brands covered by a  
19       stewardship plan filed with the Secretary. The Secretary shall update  
20       information on the website within 10 days of receipt of notice of any change to  
21       the listed information.



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

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

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

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

20        (c) Educational material. A producer or primary battery stewardship  
21        organization supplying primary batteries to a retailer shall provide the retailer

1 with educational materials describing collection opportunities for primary  
2 batteries. The retailer shall make the educational materials available to  
3 consumers.

4 Subchapter 3. Registration of Producers of Primary Battery-Containing  
5 Products

6 § 7588. REGISTRATION OF PRODUCERS OF PRIMARY-BATTERY  
7 CONTAINING PRODUCTS

8 (a) Registration. On or before July 1, 2016, a producer of a primary  
9 battery-containing product sold, offered for sale, or delivered to a retailer for  
10 subsequent sale in the State shall register with the Secretary, on a form  
11 provided by the Secretary. The registration form shall include:

12 (1) the brands of primary battery-containing products covered under the  
13 producer's registration; and

14 (2) the name and contact information of a person responsible for the  
15 producer's compliance with the requirements of this chapter.

16 (b) Compliance. A producer of a primary battery-containing product shall:

17 (1) indicate in its registration that it is participating in a primary battery  
18 stewardship organization approved under subchapter 2 of this chapter;

19 (2) submit to the Secretary a sworn statement affirming that it only uses  
20 primary batteries supplied by a primary battery producer participating in an  
21 approved battery stewardship program; or

1           (3) submit to the Secretary the estimated number of primary batteries in  
2           the producer’s primary battery-containing products that are estimated to be  
3           sold in the State. Estimates of primary batteries contained in primary  
4           battery-containing products sold in the State may be based on a reasonable pro  
5           rata calculation of national sales of the primary battery-containing products.

6           (d) New producers. A producer of a primary battery-containing product  
7           who, after July 1, 2016, seeks to sell, offer for sale, or offer for promotional  
8           purposes in the State a primary battery-containing product not previously sold  
9           in the State shall register with the Secretary prior to selling or offering for sale  
10           or promotion a primary battery-containing product.

11           § 7589. APPLICABILITY

12           (a) Applicability of primary battery stewardship requirements.

13           (1) A producer of a primary battery-containing product that complies  
14           with the requirements of section 7588 of this title shall not be required to  
15           comply with the requirements of subchapter 2 of this chapter, unless the  
16           producer is implementing a primary battery stewardship plan or participating  
17           in a primary battery stewardship organization registered under section 7583 of  
18           this title.

19           (2) If a producer of a primary battery-containing product fails to comply  
20           with the requirements of section 7588 of this title, the Secretary may require  
21           the producer to comply with the requirements of subchapter 2 of this chapter.

1        (b) Reimbursement. A primary battery producer or a primary battery  
2        stewardship organization shall be authorized to seek reimbursement from a  
3        producer of a primary-battery containing product under section 7591 of this  
4        title when the producer of the primary battery or the primary battery  
5        stewardship organization collects a primary battery from a primary  
6        battery-containing product.

7                Subchapter 4. Registration of Rechargeable Battery Stewards

8        § 7590. REGISTRATION OF RECHARGEABLE BATTERY

9                STEWARDSHIP ORGANIZATION

10        (a) A rechargeable battery stewardship organization shall register with the  
11        Secretary in order to seek reimbursement under subchapter 5 of this chapter.

12        (b) The Secretary shall register a rechargeable battery stewardship  
13        organization upon:

14                (1) submission of a registration form, provided by the Secretary, that  
15        includes:

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

18                (B) the name, address, and contact information of a person  
19        responsible for implementing the rechargeable battery stewardship  
20        organization.

1           (2) a determination by the Secretary that the rechargeable battery  
2           stewardship organization offers to municipalities and retailers a year-round  
3           free collection and recycling program.

4   Subchapter 5. Reimbursement

5           § 7591. REIMBURSEMENT; AUTHORIZATION

6           (a) Reimbursement of primary battery producers. A producer or  
7           stewardship organization operating under an approved primary battery  
8           stewardship plan that collects primary batteries or rechargeable batteries that  
9           are not listed under its approved plan shall be entitled to reimbursement from  
10           the producer of the collected primary battery, the producer of a collected  
11           primary battery-containing product, or the rechargeable battery stewardship  
12           organization responsible for the collected rechargeable batteries of direct costs  
13           per unit of weight incurred in collecting the batteries or products, provided  
14           that:

15           (1) reimbursement may be requested by a collecting producer only after  
16           that producer has achieved the collection rate performance goal approved by  
17           the Secretary under section 7584 of this title; and

18           (2) reimbursement shall be allowed only for those authorized costs  
19           incurred in collecting the batteries subject to the reimbursement request.

20           (b) Reimbursement of rechargeable battery stewards. A primary battery  
21           producer or primary battery stewardship organization shall reimburse operators

1 of a registered rechargeable battery stewardship organization, or other persons  
2 operating a registered rechargeable battery stewardship program, for actual  
3 direct costs per unit of weight incurred by the registered rechargeable battery  
4 stewardship organization in the collection of primary batteries of a producer  
5 participating in an approved primary battery stewardship program in the State.

6 (c) Direct costs. Under this subchapter, direct costs include costs of  
7 collection, transport, recycling, and other methods of approved disposition,  
8 plus an additional negotiated amount not to exceed 10 percent of the direct  
9 costs.

10 § 7592. REIMBURSEMENT PROCESS

11 (a) Reimbursement request.

12 (1) A producer, primary battery stewardship organization, or  
13 rechargeable battery stewardship organization that incurs reimbursable direct  
14 costs under section 7591 of this title shall submit a request to the producer of  
15 the collected primary battery or primary battery-containing products or the  
16 rechargeable battery stewardship organization responsible for the collected  
17 rechargeable battery.

18 (2) A producer or primary battery stewardship organization or  
19 rechargeable battery stewardship organization that receives a request for  
20 reimbursement may, prior to payment and within 30 days of receipt of the

1 request for reimbursement, request an independent audit of submitted  
2 reimbursement costs.

3 (3) The independent auditor shall be responsible for verifying the  
4 reasonableness of the reimbursement request, including the costs sought for  
5 reimbursement and the amount of reimbursement. In determining the  
6 reasonableness of the amount of the reimbursement, the independent auditor  
7 shall compare the direct costs assessed by each of the two programs and shall  
8 use the lower of the two costs for each direct cost included in the calculation of  
9 the amount of reimbursement.

10 (4) If the independent audit confirms the reasonableness of the  
11 reimbursement request, the producer, primary battery stewardship  
12 organization, or rechargeable battery stewardship organization requesting the  
13 audit shall pay the cost of the audit and the amount of the reimbursement  
14 calculated by the independent auditor. If the independent audit indicates the  
15 reimbursement request was not reasonable, the producer or stewardship  
16 organization submitting the reimbursement request shall pay the cost of the  
17 audit and the amount of the reimbursement calculated by the independent  
18 auditor.

19 (b) Battery stewardship program; reimbursement procedure. The Secretary  
20 may require a primary battery stewardship organization to submit the  
21 procedure for reimbursement under this section to the Secretary for approval.

1       (c) Role of Agency. The Agency shall not be required to provide  
2       assistance or otherwise participate in a reimbursement request, audit, or other  
3       action under this section, unless subject to subpoena before a court of  
4       jurisdiction.

#### 5                               Subchapter 6. Private Right of Action

#### 6       § 7593. PRIVATE RIGHT OF ACTION

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

11           (1) the plaintiff producer or stewardship organization incurs more than  
12      \$1,000.00 in actual direct costs collecting, handling, recycling, or properly  
13      disposing of primary batteries sold or offered for sale in the State by  
14      another producer;

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

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

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



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

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

6                   (A) the plaintiff producer or stewardship organization submitted a  
7                   reimbursement request to another producer or stewardship organization under  
8                   subchapter 5 of this chapter;

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

10                          (i) 90 days of the request, if no independent audit is requested  
11                          under subchapter 5 of this chapter; or

12                          (ii) 60 days after completion of an audit if an independent audit is  
13                          requested under subchapter 5 of this chapter and the audit confirms the validity  
14                          of the reimbursement request.

15           (2) A plaintiff producer may bring a civil action under this subsection  
16           against an individual producer only if the defendant individual producer is  
17           implementing its own primary battery stewardship plan. An individual  
18           producer participating in an approved primary battery stewardship plan  
19           covering multiple producers shall not be sued individually for reimbursement.  
20           A cause of action against an individual producer participating in a stewardship

1 plan covering multiple producers shall be brought against the stewardship  
2 organization implementing the plan.

3 (c) Action against rechargeable battery steward.

4 (1) A producer or primary battery stewardship organization  
5 implementing an approved plan in compliance with the requirements of this  
6 chapter may bring a civil action for damages against a rechargeable battery  
7 steward registered by the Secretary when:

8 (A) the plaintiff producer or stewardship organization submitted a  
9 reimbursement request to the registered rechargeable battery steward under  
10 subchapter 5 of this chapter;

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

12 (i) 90 days of the request, if no independent audit is requested  
13 under section 7592 of this title; or

14 (ii) 60 days after completion of an audit if an independent audit is  
15 requested under subchapter 5 of this chapter and the audit confirms the validity  
16 of the reimbursement request.

17 (2) A civil action under this subsection may be brought against an  
18 individual rechargeable battery manufacturer only if the manufacturer is  
19 implementing its own rechargeable battery stewardship program. An action  
20 against a rechargeable battery manufacturer participating in a battery steward

1 program covering multiple producers shall be brought against the rechargeable  
2 battery stewardship organization as a whole.

3 (d) Action by rechargeable battery steward.

4 (1) A rechargeable battery steward may bring a civil action for damages  
5 against a primary battery producer or primary battery stewardship organization  
6 that is implementing an approved plan in the State when:

7 (A) the rechargeable battery steward submitted a reimbursement  
8 request to another producer or stewardship organization under subchapter 5 of  
9 this chapter;

10 (B) the rechargeable battery steward does not receive  
11 reimbursement within:

12 (i) 90 days of the request, if no independent audit is requested  
13 under subchapter 5 of this chapter; or

14 (ii) 60 days after completion of an audit if an independent audit is  
15 requested under subchapter 5 of this chapter and the audit confirms the validity  
16 of the reimbursement request.

17 (2) A civil action under this subsection may be brought against an  
18 individual primary battery producer only if the producer is implementing its  
19 own primary battery stewardship plan or the producer has failed to register to  
20 participate in a plan. A primary battery producer participating in an approved  
21 primary battery stewardship plan covering multiple producers shall not be sued

1 individually for reimbursement. An action against a primary battery producer  
2 participating in a stewardship plan covering multiple producers shall be  
3 brought against the stewardship organization implementing the plan.

4 (e) Role of Agency. The Agency shall not be a party to or be required to  
5 provide assistance or otherwise participate in a civil action authorized under  
6 this section solely due to its regulatory requirements under this chapter, unless  
7 subject to subpoena before a court of jurisdiction.

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

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

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

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

16 Subchapter 7. General Provisions

17 § 7594. CONFIDENTIALITY OF SUBMITTED DATA

18 (a) Confidentiality. Reports and data submitted under this chapter shall be  
19 available for public inspection and copying, provided that:

20 (1) Information protected under the Uniform Trade Secrets Act, as  
21 codified under 9 V.S.A. chapter 143, or under the trade secret exemption under

1 1 V.S.A. § 317(c)(9) shall be exempt from public inspection and copying under  
2 the Public Records Act.

3 (2) The Secretary may publish information confidential under  
4 subdivision (1) of this subsection in a summary or aggregated form that does  
5 not directly or indirectly identify individual producers, battery stewards,  
6 distributors, or retailers.

7 (b) Omission of trade secret information. The Secretary may require, as a  
8 part of a report submitted under this chapter, that the producer, stewardship  
9 organization, or battery steward submit a report that does not contain trade  
10 secret information and is available for public inspection and review.

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

16 § 7595. ANTITRUST; CONDUCT AUTHORIZED

17 (a) Activity authorized. A producer, group of producers, or stewardship  
18 organization implementing or participating in an approved stewardship plan  
19 under this chapter for the collection, transport, processing, and end-of-life  
20 management of primary batteries is individually or jointly immune from  
21 liability for the conduct under State laws relating to antitrust, restraint of trade,

1 unfair trade practices, and other regulation of trade or commerce under  
2 9 V.S.A. chapter 63, subchapter 1, to the extent that the conduct is reasonably  
3 necessary to plan, implement, and comply with the producer's, group of  
4 producers', or stewardship organization's chosen system for managing  
5 discarded primary batteries. This subsection shall also apply to conduct of a  
6 retailer or wholesaler participating in a producer or stewardship organization's  
7 approved plan when the conduct is necessary to plan and implement the  
8 producer's or stewardship organization's organized collection or recycling  
9 system for discarded batteries

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

16 § 7596. ADMINISTRATIVE FEE

17 (a) Fee assessed. A primary battery producer or primary battery  
18 stewardship organization shall pay a fee of \$15,000.00 annually for operation  
19 under a stewardship plan approved by the Secretary under section 7586 of this  
20 title.



1 title and rulemaking, under the following authorities and under the rules  
2 adopted under those authorities:

3 (1) The following provisions of this title:

4 \* \* \*

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

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

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

9 (2) 29 V.S.A. chapter 11 (management of lakes and ponds).

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

11 Sec. 4. EFFECTIVE DATE

12 This act shall take effect on passage.

13

14

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

16

17

18

\_\_\_\_\_

Representative [surname]

FOR THE COMMITTEE