

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 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) “Participate” means to appoint a stewardship program or
4 rechargeable battery stewardship organization to operate on behalf of oneself
5 and to have that appointment accepted by the stewardship program or
6 organization.

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

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

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

14 (A) a primary battery that is sold in a computer; computer monitor;
15 device containing a cathode ray tube; printer; television; or computer
16 peripheral;

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

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

1 (12) “Primary battery stewardship organization” or “stewardship
2 organization” means an organization appointed by one or more producers to
3 act as an agent on behalf of a producer or producers to design, submit,
4 implement, and administer a primary battery stewardship plan under
5 this chapter.

6 (13) “Primary battery stewardship plan” or “plan” means a plan
7 submitted to the Secretary pursuant to section 7584 of this title by an
8 individual producer or a primary battery stewardship organization.

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

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

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

1 (C) if subdivisions (A) and (B) of this subdivision (14) do not apply,
2 a person who imports a primary battery or a primary battery-containing
3 product into the State for sale or distribution.

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

7 (16)(A) “Rechargeable battery” means:

8 (i) one or more voltaic or galvanic cells, electrically connected to
9 produce electric energy and designed to be recharged and weighing less than
10 11 pounds; or

11 (ii) a battery pack designed to be recharged that weighs less than
12 11 pounds and that is designed to provide less than 40 volts direct current.

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

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

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

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

20 (I) is sealed;

21 (II) contains no liquid electrolyte; and

1 (III) is intended by its manufacturer to power a handheld device
2 or to provide uninterrupted backup electrical power protection for stationary
3 consumer products or stationary office equipment; or

4 (iv) a battery intended for industrial, business-to-business,
5 warranty or maintenance services, or nonpersonal use.

6 (17) “Rechargeable battery steward” means a person who:

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

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

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

16 (18) “Rechargeable battery stewardship organization” means an entity
17 registered by the Secretary pursuant to section 7590 of this title that is either a
18 single rechargeable battery steward operating on its own behalf; an
19 organization appointed by one or more rechargeable battery stewards to
20 operate a plan in which each steward is participating; or a retailer or franchisor
21 of retailers operating a plan on behalf of itself or its franchisees.

1 (19) “Rechargeable product” means a consumer product that contains or
2 is packaged with a rechargeable battery at the time the product is sold, offered
3 for 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) an implanted medical device, as that term is defined in the federal
8 Food, Drug, and Cosmetic Act, 21 U.S.C. § 321(h), as amended.

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

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

18 (22) “Secretary” means the Secretary of Natural Resources.

1 Subchapter 2. Primary Battery Stewardship Program

2 § 7582. SALE OF PRIMARY BATTERIES

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

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

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

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

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

18 (c) New producers.

19 (1) A producer of a primary battery who, after January 1, 2016, seeks to
20 sell, offer for sale, or offer for promotional purposes in the State a primary
21 battery not previously sold in State, shall notify the Secretary prior to selling or

1 offering for sale or promotion a primary battery not covered by an approved
2 stewardship plan.

3 (2) The Secretary shall list a producer who supplies notice under this
4 subsection as a “new producer” on the Agency’s website. A producer that
5 supplies notice under this subsection shall have 90 days, not including the time
6 required for public comment under subsection 7586(c) of this section, to either
7 join an existing primary battery stewardship organization or submit a primary
8 battery stewardship plan for approval to the State.

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

13 § 7583. PRIMARY BATTERY STEWARDSHIP ORGANIZATION;
14 REQUIREMENTS; REGISTRATION

15 (a) Participation in a stewardship organization. A producer of primary
16 batteries may meet the requirements of this chapter by participating in a
17 primary battery stewardship organization that undertakes the producer’s
18 responsibilities under sections 7582, 7584, and 7585 of this title.

19 (b) Qualifications for a stewardship organization. To qualify as a primary
20 battery stewardship organization under this chapter, an organization shall:

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

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

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

8 (c) Registration requirements.

9 (1) Beginning on March 1, 2015 and annually thereafter, a stewardship
10 organization shall file a registration form with the Secretary. The Secretary
11 shall provide the registration form to a stewardship organization. The
12 registration form shall require submission of the following information:

13 (A) a list of the producers participating in the stewardship
14 organization;

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

17 (C) a description of how the stewardship organization proposes to
18 meet the requirements of subsection (a) of this section, including any
19 reasonable requirements for participation in the stewardship organization; and

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

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

6 § 7584. PRIMARY BATTERY STEWARDSHIP PLAN

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

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

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

17 (A) all participating producers and contact information for each of
18 the participating producers; and

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

20 (2) Free collection. Each primary battery stewardship plan shall provide
21 for the collection of primary batteries from consumers **at no cost to consumers.**

1 A producer shall not refuse the collection of a primary battery based on the
2 brand or producer of the primary battery.

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

5 (A) Allow **all retailers who meet requirements specified in the plan,**
6 all municipalities, and all certified solid waste management facilities to opt to
7 be a collection facility.

8 (B) Provide, at a minimum, no fewer than two collection facilities in
9 each county in the State that provide for collection throughout the year.

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

13 (4) 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.

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

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

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

6 (C) the name, address, and contact information of the recycling
7 facilities that process the collected primary batteries.

8 (6) Education and outreach. A primary battery stewardship plan shall
9 include an education and outreach program. The education and outreach
10 program may include mass media advertising in radio or television broadcasts
11 or newspaper publications of general circulation in the State, retail displays,
12 articles in trade and other journals and publications, and other public
13 educational efforts. The education and outreach program shall describe the
14 outreach procedures that will be used to provide notice of the program to
15 businesses, municipalities, certified solid waste management facilities,
16 retailers, wholesalers, and haulers. At a minimum, the education and outreach
17 program shall notify the public of the following:

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

20 (B) the location of collection points and how to access the
21 collection program.

1 (7) Reimbursement. A primary battery stewardship plan shall include a
2 reimbursement procedure that is consistent with the requirements of subchapter
3 5 of this chapter.

4 (8) Performance goal; collection rate. A primary battery stewardship
5 plan shall include a collection rate performance goal for the primary batteries
6 subject to the plan.

7 (c) Implementation. A producer or a primary battery stewardship
8 organization shall include provisions in the plan for the implementation of the
9 program in conjunction with those retailers, municipalities, and certified solid
10 waste management facilities acting as collection facilities under a program.
11 No transportation or recycling cost shall be imposed on retailers,
12 municipalities, or certified solid waste management facilities acting as
13 collection facilities under a program. A producer or a primary battery
14 stewardship organization shall provide retailers, municipalities, and certified
15 solid waste management facilities acting as collection facilities products or
16 equipment for setting up a collection point and for providing for the pickup of
17 collected primary batteries, including arranging for the management of those
18 primary batteries.

1 § 7585. ANNUAL REPORT; PLAN AUDIT

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

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

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

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

11 (4) examples and description of educational materials used to increase
12 collection;

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

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

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

18 (b) Plan audit. After five years of implementation of an approved plan, a
19 producer or stewardship organization shall hire an independent third party to
20 conduct a one-time audit of the plan and plan operation. The auditor shall
21 examine the effectiveness of the program in collecting and recycling primary

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

6 § 7586. AGENCY RESPONSIBILITIES; APPROVAL OF PLANS

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

20 (b) Plan amendment; changes. Any changes to a proposed stewardship
21 plan shall be approved by the Secretary in writing. The Secretary, in his or her

1 discretion or at the request of a producer, may require a producer or a primary
2 battery stewardship organization to amend an approved plan.

3 (c) Public notice. The Secretary shall post all proposed primary battery
4 stewardship plans and all proposed amendments to a primary battery
5 stewardship plan on the Agency's website for 30 days from the date the
6 application for a plan or an amendment is deemed complete by the Secretary,
7 subject to the confidentiality provisions of section 7594 of this title.

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

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

14 (f) Agency website. The Secretary shall maintain a website that includes a
15 copy of all approved plans, the names of producers with approved plans,
16 participation in approved plans, or other compliance with this chapter. The
17 website shall list all of an approved producer's brands covered by a
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.

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 producer of the primary battery is implementing an approved
9 collection plan or is a member of a primary battery stewardship organization,
10 as determined by review of the producers listed on the Agency website
11 required in subsection 7586(f) of this title.

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

5 Battery-Containing 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. A registration required by this section may be
12 submitted by an industry or trade organization or association representing a
13 producer or producers of a primary battery-containing product. The
14 registration form shall require submission of the following information:

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

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

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

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

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

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

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

14 § 7589. APPLICABILITY

15 (a) Applicability of primary battery stewardship requirements.

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

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

4 (b) Reimbursement. A primary battery producer or a primary battery
5 stewardship organization shall be authorized to seek reimbursement from a
6 producer of a primary-battery containing product under subchapter 5 of this
7 chapter when the producer of the primary battery or the primary battery
8 stewardship organization collects a primary battery from a primary
9 battery-containing product.

10 Subchapter 4. Registration of Rechargeable Battery

11 Stewardship Organization

12 § 7590. REGISTRATION OF RECHARGEABLE BATTERY

13 STEWARDSHIP ORGANIZATION

14 (a) A rechargeable battery steward or rechargeable battery stewardship
15 organization shall register with the Secretary in order to seek reimbursement
16 under subchapter 5 of this chapter.

17 (b) The Secretary shall register a rechargeable battery steward or
18 rechargeable battery stewardship organization upon:

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

1 (B) the producer of a collected primary battery-containing product or,
2 if the producer of a collected primary battery-containing product is
3 participating in a primary battery stewardship organization, the primary battery
4 stewardship organization; or

5 (C) the rechargeable battery steward, or where the steward is
6 participating in a rechargeable battery stewardship organization, the
7 stewardship organization, responsible for the collected rechargeable batteries.

8 (2) Reimbursement may be requested by a collecting primary battery
9 producer or primary battery stewardship organization only after that producer
10 has achieved the collection rate performance goal approved by the Secretary
11 under section 7584 of this title.

12 (3) Reimbursement shall be allowed only for those direct costs incurred
13 in collecting the batteries subject to the reimbursement request.

14 (b) Reimbursement of rechargeable battery stewardship organization. A
15 registered rechargeable battery steward or rechargeable battery stewardship
16 organization shall be entitled to reimbursement from the following entities of
17 direct costs per unit of weight incurred in collecting the batteries:

18 (1) the producer of the collected primary battery or the primary battery
19 stewardship organization representing the producer of the collected primary
20 battery; or

1 (2) the producer of a collected primary battery-containing product or,
2 if the producer of a collected primary battery-containing product is
3 participating in a primary battery stewardship organization, the primary battery
4 stewardship organization.

5 (c) Direct costs. Under this subchapter, direct costs include costs of
6 collection, transport, recycling, and other methods of disposition identified in a
7 plan approved pursuant to section 7586 of this title, plus an additional
8 negotiated amount not to exceed 10 percent of the direct costs.

9 § 7592. REIMBURSEMENT PROCESS

10 (a) Reimbursement request.

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

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

1 (3) The independent auditor shall be responsible for verifying the
2 reasonableness of the reimbursement request, including the costs sought for
3 reimbursement, the amount of reimbursement, and the direct costs assessed by
4 each of the two programs.

5 (4) If the independent audit confirms the reasonableness of the
6 reimbursement request, the producer, primary battery stewardship
7 organization, or rechargeable battery stewardship organization requesting the
8 audit shall pay the cost of the audit and the amount of the reimbursement
9 calculated by the independent auditor. If the independent audit indicates the
10 reimbursement request was not reasonable, the producer or stewardship
11 organization that initiated the reimbursement request shall pay the cost of the
12 audit and the amount of the reimbursement calculated by the independent
13 auditor.

14 (b) Role of Agency. The Agency shall not be required to provide
15 assistance or otherwise participate in a reimbursement request, audit, or other
16 action under this section, unless subject to subpoena before a court of
17 jurisdiction.

18 Subchapter 6. Private Right of Action

19 § 7593. PRIVATE RIGHT OF ACTION

20 (a) Action against producer with no stewardship plan. A producer or a
21 primary battery stewardship organization implementing an approved plan in

1 compliance with the requirements of this chapter may bring a civil action
2 against another producer or stewardship organization for damages when:

3 (1) the plaintiff producer or stewardship organization incurs more than
4 \$1,000.00 in actual direct costs collecting, handling, recycling, or properly
5 disposing of primary batteries sold or offered for sale in the State by **that**
6 **other** producer;

7 (2) if the other producer or stewardship organization is a producer of
8 battery containing products, the plaintiff producer or stewardship organization
9 submitted a reimbursement request to another producer or stewardship
10 organization under subchapter 5 of this chapter; and the plaintiff producer does
11 not receive reimbursement within:

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

14 (B) 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; and

17 (3) the producer from whom damages are sought:

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

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

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

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

9 (A) the plaintiff producer or stewardship organization submitted a
10 reimbursement request to another producer or stewardship organization under
11 subchapter 5 of this chapter;

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

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

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

18 (2) A plaintiff producer may bring a civil action under this subsection
19 against an individual producer only if the defendant individual producer is
20 implementing its own primary battery stewardship plan. An individual
21 producer participating in an approved primary battery stewardship plan

1 covering multiple producers shall not be sued individually for reimbursement.
2 A cause of action against an individual producer participating in a stewardship
3 plan covering multiple producers shall be brought against the stewardship
4 organization implementing the plan.

5 (c) Action against rechargeable battery steward or rechargeable battery
6 stewardship organization.

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

12 (A) the plaintiff producer or stewardship organization submitted a
13 reimbursement request to the registered rechargeable battery steward or
14 rechargeable battery stewardship organization under subchapter 5 of this
15 chapter;

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

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

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

1 (2) A civil action under this subsection may be brought against an
2 individual rechargeable battery steward only if the steward is implementing its
3 own rechargeable battery stewardship program. An action against a
4 rechargeable battery steward participating in a battery steward program
5 covering multiple producers shall be brought against the rechargeable battery
6 stewardship organization as a whole.

7 (d) Action by rechargeable battery steward or rechargeable battery
8 stewardship organization.

9 (1) A rechargeable battery steward or rechargeable battery stewardship
10 organization may bring a civil action for damages against a primary battery
11 producer or primary battery stewardship organization that is implementing an
12 approved plan in the State or a primary battery-containing product producer
13 when:

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

17 (B) the rechargeable battery steward or rechargeable battery
18 stewardship organization does not receive reimbursement within:

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

1 (ii) 60 days after completion of an audit if an independent audit is
2 requested under subchapter 5 of this chapter and the audit confirms the validity
3 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
7 register to participate in a plan. A primary battery producer or a primary
8 battery-containing product producer participating in an approved primary
9 battery stewardship plan covering multiple producers shall not be sued
10 individually for reimbursement. An action against a primary battery producer
11 or a primary battery-containing product producer participating in a stewardship
12 plan covering multiple producers shall be brought against the stewardship
13 organization implementing the plan.

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

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

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

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 § 7595. 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 is 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

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 § 7596. ADMINISTRATIVE FEE

8 (a) Fees assessed.

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

12 (2) A producer of primary battery-containing product or an association
13 representing a producer or producers of primary battery-containing products
14 shall pay a fee of \$1,000.00 annually for registration under section 7588 of this
15 title.

16 (3) A rechargeable battery steward or rechargeable battery stewardship
17 organization shall pay a fee of \$1,000.00 annually for registration under
18 section 7590 of this title.

19 (b) Disposition of fees. The fees collected under subsection (a) of this
20 section shall be deposited in the Environmental Permit Fund under
21 3 V.S.A. § 2805.

1 § 7597. RULEMAKING; PROCEDURE

2 The Secretary may adopt rules or procedures to implement the requirements
3 of this chapter.

4 Sec. 2. 10 V.S.A. § 8003(a) is amended to read:

5 (a) The Secretary may take action under this chapter to enforce the
6 following statutes and rules, permits, assurances, or orders implementing the
7 following statutes:

8 * * *

9 (22) 10 V.S.A. chapter 164A, collection and disposal of
10 mercury-containing lamps; ~~and~~

11 (23) 24 V.S.A. § 2202a, relating to a municipality's adoption and
12 implementation of a solid waste implementation plan that is consistent with the
13 State Solid Waste Plan; and

14 (24) 10 V.S.A. chapter 168, relating to the collection and disposal of
15 primary batteries.

16 Sec. 3. 10 V.S.A. § 8503(a) is amended to read:

17 (a) This chapter shall govern all appeals of an act or decision of the
18 Secretary, excluding enforcement actions under chapters 201 and 211 of this
19 title and rulemaking, under the following authorities and under the rules
20 adopted under those authorities:

1 (1) The following provisions of this title:

2 * * *

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

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

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

7 (2) 29 V.S.A. chapter 11 (management of lakes and ponds).

8 (3) 24 V.S.A. chapter 61, subchapter 10 (relating to salvage yards).

9 Sec. 4. EFFECTIVE DATE

10 This act shall take effect on passage.

11

12

13 (Committee vote: _____)

14

15

Representative [surname]

16

FOR THE COMMITTEE