

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 AND RECHARGEABLE 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 a primary battery and attributes the primary battery to the owner
16 or licensee of the brand as the producer.

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

19 (4) “Collection rate” means a percentage by weight that each producer
20 or primary battery stewardship organization collects by an established date.
21 The collection rate shall be calculated by dividing the total weight of the

1 primary batteries that are collected during a calendar year by the average
2 annual weight of primary batteries that were estimated to have been sold in the
3 State by participating producers during the previous three calendar years.
4 Estimates of primary batteries sold in the State may be based on a reasonable
5 pro rata calculation based on national sales.

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

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

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

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

17 (9) “Participate” means to appoint a primary battery stewardship
18 organization or rechargeable battery stewardship organization to operate on
19 behalf of oneself and to have that appointment accepted by the stewardship
20 organization.

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

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

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

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

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

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

1 (13) “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 (14) “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 (15)(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 (16) “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 (16) do not apply,
14 imports a rechargeable battery or rechargeable product into the State for sale
15 or distribution.

16 (17) “Rechargeable battery stewardship organization” means an entity
17 registered by the Secretary pursuant to section 7588 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 (18) “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 (19) “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 (20) “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 (21) “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 primary battery stewardship organization in
11 which the producer is participating is registered under an approved and
12 implemented primary battery stewardship plan;

13 (2) the producer or primary battery stewardship organization has paid
14 the fee under section 7594 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 primary battery 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 or into the State primary batteries with a total retail value of less
11 than \$2,000.00 shall be exempt from the requirements of this chapter.

12 § 7583. PRIMARY BATTERY STEWARDSHIP ORGANIZATION;

13 REQUIREMENTS; REGISTRATION

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

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

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

3 (2) not create unreasonable barriers for participation by producers in the
4 primary battery 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 primary
10 battery stewardship organization shall file a registration form with the
11 Secretary. The Secretary shall provide the registration form to a primary
12 battery stewardship organization. The registration form shall require
13 submission of the following information:

14 (A) a list of the producers participating in the primary battery
15 stewardship organization;

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

18 (C) a description of how the primary battery stewardship
19 organization proposes to meet the requirements of subsection (a) of this
20 section, including any reasonable requirements for participation in the primary
21 battery 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 primary
3 battery stewardship 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, distributing, or offering for
9 promotional purposes a primary battery in the State shall individually or as part
10 of a primary battery stewardship organization submit a primary battery
11 stewardship plan to the 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
2 a reimbursement procedure that is consistent with the requirements of
3 subchapter 4 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 primary battery 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 primary battery
10 producers covered by the primary battery stewardship plan and contact
11 information for each location;

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

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

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

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

19 (b) Plan audit. After five years of implementation of an approved primary
20 battery stewardship plan, a primary battery producer or primary battery
21 stewardship organization shall hire an independent third party to conduct a

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

8 § 7586. AGENCY RESPONSIBILITIES; APPROVAL OF PLANS

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

1 under subsection (c) of this section, of submission by a producer shall be
2 deemed approved.

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

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

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

15 (e) Registrations. The Secretary shall accept, review, and approve or deny
16 primary battery stewardship organization registrations submitted under section
17 7583 of this title.

18 (f) Agency website. The Secretary shall maintain a website that includes a
19 copy of all approved primary battery stewardship plans, the names of
20 producers with approved plans, participation in approved plans, or other
21 compliance with this chapter. The website shall list all of an approved primary

1 battery producer's brands covered by a primary battery stewardship plan filed
2 with the Secretary. The Secretary shall update information on the website
3 within 10 days of receipt of notice of any change to the listed information. The
4 website shall list all known primary battery producers exempt from the
5 requirements of this chapter under subsection 7582(d) of this title.

6 (g) Term of primary battery stewardship plan. A primary battery
7 stewardship plan approved by the Secretary under this section shall have a
8 term not to exceed five years, provided that the primary battery producer or
9 primary battery stewardship organization remains in compliance with the
10 requirements of this chapter and the terms of the approved plan.

11 § 7587. RETAILER OBLIGATIONS

12 (a) Sale prohibited. Except as set forth in subsection (b) of this section, no
13 retailer shall sell or offer for sale a primary battery on or after January 1, 2016
14 unless the producer of the primary battery is implementing an approved
15 primary battery stewardship plan, is a member of a primary battery
16 stewardship organization implementing an approved primary battery
17 stewardship plan, or is exempt from participation in an approved plan, as
18 determined by review of the producers listed on the Agency website required
19 in subsection 7586(f) of this title.

1 (b) Inventory exception; expiration or revocation of producer registration.

2 A retailer shall not be responsible for an unlawful sale of a primary battery

3 under this subsection if:

4 (1) the retailer purchased the primary battery prior to January 1, 2016

5 and sells the primary battery on or before January 1, 2017; or

6 (2) the producer’s primary battery stewardship plan expired or was

7 revoked, and the retailer took possession of the in-store inventory of primary

8 batteries prior to the expiration or revocation of the producer’s primary battery

9 stewardship plan.

10 (c) Educational material. A producer or primary battery stewardship

11 organization supplying primary batteries to a retailer shall provide the retailer

12 with educational materials describing collection opportunities for primary

13 batteries. The retailer shall make the educational materials available to

14 consumers.

15 Subchapter 3. Registration of Rechargeable Battery

16 Stewardship Organization

17 § 7588. REGISTRATION OF RECHARGEABLE BATTERY

18 STEWARDSHIP ORGANIZATION

19 (a) A rechargeable battery steward or rechargeable battery stewardship

20 organization shall register with the Secretary in order to seek reimbursement

21 under subchapter 4 of this chapter.

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

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

5 (A) the name of a rechargeable battery steward implementing an
6 individual program or a list of the producers participating in a rechargeable
7 battery stewardship organization; and

8 (B) the name, address, and contact information of a person
9 responsible for implementing the rechargeable battery stewardship program;

10 (2) a determination by the Secretary that the rechargeable battery
11 steward or rechargeable battery stewardship organization offers to
12 municipalities, certified solid waste management facilities, and retailers a
13 year-round free collection and recycling program.

14 Subchapter 4. Reimbursement

15 § 7589. REIMBURSEMENT; AUTHORIZATION

16 (a) Reimbursement of primary battery producers.

17 (1) A producer or a primary battery stewardship organization operating
18 under an approved primary battery stewardship plan that collects primary
19 batteries or rechargeable batteries that are not listed under its approved plan
20 shall be entitled to reimbursement from the following entities of direct costs
21 per unit of weight incurred in collecting the batteries:

1 (A) the producer of the collected primary battery or the primary
2 battery stewardship organization representing the producer of the collected
3 primary battery; or

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

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 (b) Reimbursement of rechargeable battery stewardship organization. A
13 registered rechargeable battery steward or rechargeable battery stewardship
14 organization shall be entitled to reimbursement from the producer of the
15 collected primary battery or the primary battery stewardship organization
16 representing the producer of the collected primary battery.

17 (c) Direct costs. Under this subchapter, reimbursement shall be allowed
18 only for those direct costs incurred in collecting the batteries subject to the
19 reimbursement request. Direct costs include costs of collection, transport,
20 recycling, and other methods of disposition identified in a primary battery

1 stewardship plan approved pursuant to section 7586 of this title, plus an
2 additional negotiated amount not to exceed 10 percent of the direct costs.

3 § 7590. REIMBURSEMENT PROCESS

4 (a) Reimbursement request.

5 (1) A primary battery producer, primary battery stewardship
6 organization, or rechargeable battery stewardship organization that incurs
7 reimbursable direct costs under section 7589 of this title shall submit a request
8 to the producer of the collected primary battery or the primary battery
9 stewardship organization in which the producer is participating or the
10 rechargeable battery stewardship organization responsible for the collected
11 rechargeable battery.

12 (2) A producer or primary battery stewardship organization or
13 rechargeable battery stewardship organization that receives a request for
14 reimbursement may, prior to payment and within 30 days of receipt of the
15 request for reimbursement, request an independent audit of submitted
16 reimbursement costs.

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

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

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

14 Subchapter 5. Private Right of Action

15 § 7591. PRIVATE RIGHT OF ACTION

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

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

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

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

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

12 (b) Action against producer with an approved primary battery stewardship
13 plan. A producer or primary battery stewardship organization in compliance
14 with the requirements of this chapter may bring a civil action for damages
15 against another producer or primary battery stewardship organization in the
16 State that is in compliance with the requirements of this chapter provided that
17 the conditions of subsection (e) of this section have been met.

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

1 rechargeable battery stewardship organization registered by the Secretary
2 provided that the conditions of subsection (e) of this section have been met.

3 (d) Action by rechargeable battery stewardship organization. A
4 rechargeable battery steward may bring a civil action for damages against a
5 primary battery producer or primary battery stewardship organization that is
6 implementing an approved primary battery stewardship plan in the State
7 provided that the conditions of subsection (e) of this section have been met.

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

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

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

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

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

4 (f) Action against individual producer or steward.

5 (1) A civil action under this section may be brought against an
6 individual primary battery producer or an individual rechargeable battery
7 steward only if the primary battery producer is implementing its own primary
8 battery stewardship plan, the primary battery producer has failed to register to
9 participate in a primary battery stewardship plan, or the rechargeable battery
10 steward is implementing its own registered rechargeable battery stewardship
11 organization.

12 (2) A primary battery producer participating in an approved primary
13 battery stewardship plan covering multiple producers or a rechargeable battery
14 steward participating in a rechargeable battery stewardship organization
15 representing multiple stewards shall not be sued individually for
16 reimbursement.

17 (3) An action against a primary battery producer participating in a
18 primary battery stewardship plan covering multiple producers or an action
19 against a rechargeable battery steward participating in a rechargeable battery
20 stewardship organization shall be brought against the stewardship organization
21 implementing the plan.

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

5 (h) Damages; definitions. As used in this section, “damages” means the
6 actual, direct costs a plaintiff producer, primary battery stewardship
7 organization, or rechargeable battery stewardship organization incurs in
8 collecting, handling, recycling, or properly disposing of primary batteries
9 reasonably identified as having originated from another primary battery
10 producer, primary battery stewardship organization, or rechargeable battery
11 stewardship organization.

12 Subchapter 6. General Provisions

13 § 7592. CONFIDENTIALITY OF SUBMITTED DATA

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

16 (1) Information protected under the Uniform Trade Secrets Act, as
17 codified under 9 V.S.A. chapter 143, or under the trade secret exemption under
18 1 V.S.A. § 317(c)(9) shall be exempt from public inspection and copying under
19 the Public Records Act.

20 (2) The Secretary may publish information confidential under
21 subdivision (1) of this subsection in a summary or aggregated form that does

1 not directly or indirectly identify individual producers, battery stewards,
2 distributors, or retailers.

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

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

13 § 7593. ANTITRUST; CONDUCT AUTHORIZED

14 (a) Activity authorized. A producer, group of producers, or primary battery
15 stewardship organization implementing or participating in an approved
16 primary battery stewardship plan under this chapter for the collection,
17 transport, processing, and end-of-life management of primary batteries is
18 individually or jointly immune from liability for the conduct under State laws
19 relating to antitrust, restraint of trade, unfair trade practices, and other
20 regulation of trade or commerce under 9 V.S.A. chapter 63, subchapter 1, to
21 the extent that the conduct is reasonably necessary to plan, implement, and

1 comply with the producer's, group of producers', or primary battery
2 stewardship organization's chosen system for managing discarded primary
3 batteries. This subsection shall also apply to conduct of a retailer or
4 wholesaler participating in a producer or primary battery stewardship
5 organization's approved primary battery stewardship plan when the conduct is
6 necessary to plan and implement the producer's or primary battery stewardship
7 organization's organized collection or recycling system for discarded batteries

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

13 § 7594. ADMINISTRATIVE FEE

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

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

1 § 7595. RULEMAKING; PROCEDURE

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

4 Sec. 2. AGENCY OF NATURAL RESOURCES REPORT ON

5 IMPLEMENTATION OF PRIMARY BATTERY STEWARDSHIP

6 On or before January 15, 2019, the Agency of Natural Resources shall
7 submit to the House and Senate Committees on Natural Resources and Energy
8 a report on the progress of the primary battery stewardship program under
9 10 V.S.A. chapter 168. The report shall include:

10 (1) the amount, by weight, of primary batteries and rechargeable
11 batteries collected under approved primary battery stewardship plans;

12 (2) the percentage of collected batteries not covered by or attributable to
13 a primary battery producer implementing an approved primary battery
14 stewardship plan or participating in an approved primary battery stewardship
15 organization; and

16 (3) recommendation for any amendments to the requirements of
17 10 V.S.A. chapter 168, including whether additional manufacturers of batteries
18 or battery containing products should be required to implement primary battery
19 stewardship plans.

1 Sec. 3. 10 V.S.A. § 8003(a) is amended to read:

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

5 * * *

6 (22) 10 V.S.A. chapter 164A, collection and disposal of
7 mercury-containing lamps; ~~and~~

8 (23) 24 V.S.A. § 2202a, relating to a municipality's adoption and
9 implementation of a solid waste implementation plan that is consistent with the
10 State Solid Waste Plan; and

11 (24) 10 V.S.A. chapter 168, relating to the collection and disposal of
12 primary batteries.

13 Sec. 4. 10 V.S.A. § 8503(a) is amended to read:

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

18 (1) The following provisions of this title:

19 * * *

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

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

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

7

8

9 (Committee vote: _____)

10

11

Representative [surname]

12

FOR THE COMMITTEE