

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           (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 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