

1 TO THE HONORABLE SENATE:

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 Senate propose to the House that  
6 the bill be amended as follows:

7 First: In Sec. 1, in 10 V.S.A. § 7581, by striking out subdivisions (10) and  
8 (11) in their entirety and inserting in lieu thereof the following to read:

9 (10) “Primary battery” means a nonrechargeable battery weighing  
10 two kilograms or less, including alkaline, carbon-zinc, and lithium metal  
11 batteries. “Primary battery” shall not mean:

12 (A) batteries intended for industrial, business-to-business, warranty  
13 or maintenance services, or nonpersonal use;

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

16 (C) a battery that is not easily removable or is not intended to be  
17 removed from a consumer product; and

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

1           (11) “Primary battery producer” or “producer” means one of the  
2           following with regard to a primary battery that is sold or offered for sale in the  
3           State:

4           (A) a person who manufactures a primary battery and who sells or  
5           offers for sale that primary battery in the State under the person’s own name or  
6           brand;

7           (B) if subdivision (A) of this subdivision (11) does not apply, a  
8           person who owns or licenses a trademark or brand under which a primary  
9           battery is sold or offered for sale whether or not the trademark is registered; or

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

12           and in subdivision (18)(B), before “medical device” by striking out “an  
13           implanted” and inserting in lieu thereof a

14           Second: In Sec. 1, in 10 V.S.A. § 7582, by striking out subsections (a) and  
15           (b) in their entirety and inserting in lieu thereof the following to read:

16           (a) Sale prohibited. Except as set forth under subsections (b) and (c) of this  
17           section, beginning on January 1, 2016, a producer of a primary battery shall  
18           not sell, offer for sale, or deliver to a retailer for subsequent sale a primary  
19           battery unless:

1           (1) the producer or the primary battery stewardship organization in  
2           which the producer is participating is registered under an approved and  
3           implemented primary battery stewardship plan;

4           (2) the producer or primary battery stewardship organization has paid  
5           the fee under section 7594 of this title; and

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

9           and by relettering the remaining subsections to be alphabetically correct.

10          Third: In Sec. 1, in 10 V.S.A. § 7584, by striking out subdivision (b)(8) in  
11          its entirety and inserting in lieu thereof the following to read:

12           (8) Performance goal; collection rate. A primary battery stewardship  
13           plan shall include a collection rate performance goal for the primary batteries  
14           subject to the plan. The collection rate includes the estimated total weight of  
15           primary batteries that will be sold or offered for sale in the State by the  
16           producer or the producers participating in the primary battery stewardship plan.

17          Fourth: In Sec. 1, in 10 V.S.A. § 7585, by striking out subsection (a) in its  
18          entirety and inserting in lieu thereof the following to read:

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

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

3           (2) the estimated percentage, by weight, of rechargeable batteries  
4           collected by the producer or the primary battery stewardship organization in  
5           the prior calendar year;

6           (3) the percentage of primary batteries collected in the prior calendar  
7           year that are from producers who are not participating in any approved  
8           stewardship plan, based on periodic sorting of primary batteries by the  
9           reporting producer;

10           (4) the collection rate achieved in the prior calendar year under the  
11           primary battery stewardship plan, including a report of the estimate total sales  
12           data by weight for primary batteries sold in the State for the previous three  
13           calendar years;

14           (5) the locations for all collection points set up by the primary battery  
15           producers covered by the primary battery stewardship plan and contact  
16           information for each location;

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

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

20           (8) any material change to the primary battery stewardship plan  
21           approved by the Secretary pursuant to section 7586 of this title; and

1           (9) the cost of implementation of the primary battery stewardship plan,  
2           including the costs of collection, recycling, education, and outreach.

3           Fifth: In Sec. 1, in 10 V.S.A. § 7586, in subsection (f), in the last sentence,  
4           by striking out “7582(d)” where it appears and inserting in lieu thereof 7582(c)

5           Sixth: In Sec. 1, in 10 V.S.A. § 7589, in subdivision (a)(1), after  
6           “reimbursement from the following entities of” and before “costs per unit” by  
7           striking out “direct” and inserting in lieu thereof reimbursable  
8           and by striking out subsection (c) in its entirety and inserting in lieu thereof the  
9           following:

10           (c) Reimbursable costs. Under this subchapter, reimbursement shall be  
11           allowed only for those costs incurred in collecting the batteries subject to the  
12           reimbursement request. Reimbursable costs include:

13           (1) costs of collection, transport, recycling, and other methods of  
14           disposition identified in a primary battery stewardship plan approved pursuant  
15           to section 7586 of this title; and

16           (2) reasonable educational, promotional, or administrative costs.

17           Seventh: In Sec. 1, in 10 V.S.A. § 7590, in subdivision (a)(1), after  
18           “organization that incurs reimbursable” and before “costs under section 7589”  
19           by striking out “direct”

1 and in subdivision (a)(3), after “the amount of reimbursement, and the” and  
2 before “costs assessed by each” by striking out “direct” and inserting in lieu  
3 thereof reimbursable

4 Eighth: In Sec. 1, in 10 V.S.A. § 7591, by striking out subsections (a)–(e) in  
5 their entirety and inserting in lieu thereof the following to read:

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

12 (1) the plaintiff producer, primary battery stewardship organization,  
13 rechargeable battery steward, or rechargeable battery stewardship organization  
14 incurs more than \$1,000.00 in actual reimbursable costs collecting, handling,  
15 recycling, or properly disposing of primary batteries sold or offered for sale in  
16 the State by that other producer;

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

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

1 organization, rechargeable battery steward, or rechargeable battery stewardship  
2 organization; and

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

6 (b) Action against producer with an approved primary battery stewardship  
7 plan. A producer, a primary battery stewardship organization in compliance  
8 with the requirements of this chapter, a rechargeable battery steward, or a  
9 rechargeable battery stewardship organization may bring a civil action for  
10 damages against a primary producer or primary battery stewardship  
11 organization in the State that is in compliance with the requirements of this  
12 chapter, provided that the conditions of subsection (d) of this section have been  
13 met.

14 (c) Action against rechargeable battery stewardship organization. A  
15 producer, a primary battery stewardship organization in compliance with the  
16 requirements of this chapter, a rechargeable battery steward, or a rechargeable  
17 battery stewardship organization may bring a civil action for damages against a  
18 rechargeable battery stewardship organization registered by the Secretary,  
19 provided that the conditions of subsection (d) of this section have been met.

1        (d) Condition precedent to cause of action. Except as authorized under  
2        subsection (a) of this section, a cause of action under this section shall be  
3        allowed only if:

4            (1) a plaintiff producer, primary battery stewardship organization, or  
5        rechargeable battery stewardship organization submitted a reimbursement  
6        request to another producer, primary battery stewardship organization, or  
7        rechargeable battery stewardship organization under subchapter 4 of this  
8        chapter; and

9            (2) the plaintiff producer, primary battery stewardship organization, or  
10       rechargeable battery stewardship organization does not receive reimbursement  
11       within:

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

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

17        and by relettering the remaining subsections to be alphabetically correct  
18        and in the new subsection (g) (Damages; definition), after “means the actual,”  
19        and before “costs a plaintiff producer” by striking out “direct” and inserting in  
20        lieu thereof reimbursable

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1 (Committee vote: \_\_\_\_\_)

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Senator \_\_\_\_\_

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FOR THE COMMITTEE