

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 by striking out all after the enacting clause and inserting in  
7 lieu thereof the following:

8 Sec. 1. 10 V.S.A. chapter 168 is added to read:

9 CHAPTER 168. PRODUCT STEWARDSHIP

10 FOR PRIMARY BATTERIES AND RECHARGEABLE BATTERIES

11 Subchapter 1. Definitions

12 § 7581. DEFINITIONS

13 As used in this chapter:

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

15 (2) “Brand” means a name, symbol, word, or traceable mark  
16 that identifies a primary battery and attributes the primary battery to the owner  
17 or licensee of the brand as the producer.

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

20 (4) “Collection rate” means a percentage by weight that each producer  
21 or primary battery stewardship organization collects by an established date.

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

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

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

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

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

18 (9) “Participate” means to appoint a primary battery stewardship  
19 organization or rechargeable battery stewardship organization to operate on  
20 behalf of oneself and to have that appointment accepted by the stewardship  
21 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:

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

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

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

10           (D) a battery that is sold or used in an implanted medical device, as  
11           that term is defined in the federal Food, Drug, and Cosmetic Act, 21 U.S.C.  
12           § 321(h), as may be amended.

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

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

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

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

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

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

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

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

14                   (i) one or more voltaic or galvanic cells, electrically connected to  
15                   produce electric energy and designed to be recharged and weighing less than  
16                   11 pounds; or

17                   (ii) a battery pack designed to be recharged that weighs less than  
18                   11 pounds and that is designed to provide less than 40 volts direct current.

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

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

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

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

8                           (I) is sealed;

9                           (II) contains no liquid electrolyte; and

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

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

15           (16) “Rechargeable battery steward” means a person who:

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

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

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

4           (17) “Rechargeable battery stewardship organization” means an entity  
5           registered by the Secretary pursuant to section 7588 of this title that is either a  
6           single rechargeable battery steward operating on its own behalf; an  
7           organization appointed by one or more rechargeable battery stewards to  
8           operate a plan in which each steward is participating; or a retailer or franchisor  
9           of retailers operating a plan on behalf of itself or its franchisees.

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

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

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

18           (19) “Recycling” means any process by which discarded products,  
19           components, and by-products are transformed into new usable or marketable  
20           materials in a manner in which the original products may lose their identity,  
21           but does not include energy recovery or energy generation by means of

1 combusting discarded products, components, and by products with or without  
2 other waste products.

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

6 (21) “Secretary” means the Secretary of Natural Resources.

7 Subchapter 2. Primary Battery Stewardship Program

8 § 7582. SALE OF PRIMARY BATTERIES

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

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

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

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

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

4           (c) New producers.

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

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

16           (d) Exemption. A producer who annually sells, offers for sale, distributes,  
17           or imports in or into the State primary batteries with a total retail value of less  
18           than \$2,000.00 shall be exempt from the requirements of this chapter.



1     § 7583. PRIMARY BATTERY STEWARDSHIP ORGANIZATION;

2             REQUIREMENTS; REGISTRATION

3             (a) Participation in a primary battery stewardship organization. A producer  
4             of primary batteries may meet the requirements of this chapter by participating  
5             in a primary battery stewardship organization that undertakes the producer's  
6             responsibilities under sections 7582, 7584, and 7585 of this title.

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

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

12             (2) not create unreasonable barriers for participation by producers in the  
13             primary battery stewardship organization; and

14             (3) maintain a public website that lists all producers and producers'  
15             brands covered by the primary battery stewardship organization's approved  
16             collection plan.

17             (c) Registration requirements.

18             (1) Beginning on March 1, 2015 and annually thereafter, a primary  
19             battery stewardship organization shall file a registration form with the  
20             Secretary. The Secretary shall provide the registration form to a primary

1 battery stewardship organization. The registration form shall require  
2 submission of the following information:

3 (A) a list of the producers participating in the primary battery  
4 stewardship organization;

5 (B) the name, address, and contact information of a person  
6 responsible for ensuring a producer's compliance with this chapter;

7 (C) a description of how the primary battery stewardship  
8 organization proposes to meet the requirements of subsection (a) of this  
9 section, including any reasonable requirements for participation in the primary  
10 battery stewardship organization; and

11 (D) the name, address, and contact information of a person for a  
12 nonmember manufacturer to contact on how to participate in the primary  
13 battery stewardship organization to satisfy the requirements of this chapter.

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

16 § 7584. PRIMARY BATTERY STEWARDSHIP PLAN

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

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

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

6                (A) all participating producers and contact information for each of  
7        the participating producers; and

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

9                (2) Free collection. Each primary battery stewardship plan shall provide  
10       for the collection of primary batteries from consumers at no cost to consumers.  
11       A producer shall not refuse the collection of a primary battery based on the  
12       brand or producer of the primary battery.

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

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

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

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

4           (4) Method of disposition. Each primary battery stewardship plan shall  
5           include a description of the method that will be used to responsibly manage  
6           discarded primary batteries to ensure that the components of the discarded  
7           primary batteries, to the extent economically and technically feasible, are  
8           recycled.

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

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

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

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

18          (6) Education and outreach. A primary battery stewardship plan shall  
19          include an education and outreach program. The education and outreach  
20          program may include mass media advertising in radio or television broadcasts  
21          or newspaper publications of general circulation in the State, retail displays,

1 articles in trade and other journals and publications, and other public  
2 educational efforts. The education and outreach program shall describe the  
3 outreach procedures that will be used to provide notice of the program to  
4 businesses, municipalities, certified solid waste management facilities,  
5 retailers, wholesalers, and haulers. At a minimum, the education and outreach  
6 program shall notify the public of the following:

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

9 (B) the location of collection points and how to access the  
10 collection program.

11 (7) Reimbursement. A primary battery stewardship plan shall include  
12 a reimbursement procedure that is consistent with the requirements of  
13 subchapter 4 of this chapter.

14 (8) Performance goal; collection rate. A primary battery stewardship  
15 plan shall include a collection rate performance goal for the primary batteries  
16 subject to the plan.

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

21 No transportation or recycling cost shall be imposed on retailers,

1 municipalities, or certified solid waste management facilities acting as  
2 collection facilities under a program. A producer or a primary battery  
3 stewardship organization shall provide retailers, municipalities, and certified  
4 solid waste management facilities acting as collection facilities products or  
5 equipment for setting up a collection point and for providing for the pickup of  
6 collected primary batteries, including arranging for the management of those  
7 primary batteries.

8 § 7585. ANNUAL REPORT; PLAN AUDIT

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

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

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

17 (3) the percentage of primary batteries collected by the producer during  
18 that year that are from producers who are not participating in any approved  
19 stewardship plan, based on periodic sorting of primary batteries by the  
20 reporting producer;

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

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

6           (5) examples and description of educational materials used to increase  
7           collection;

8           (6) the manner in which the collected primary batteries were managed;

9           (7) any material change to the primary battery stewardship plan  
10          approved by the Secretary pursuant to section 7586 of this title; and

11          (8) the cost of implementation of the primary battery stewardship plan,  
12          including the costs of collection, recycling, education, and outreach.

13          (b) Plan audit. After five years of implementation of an approved primary  
14          battery stewardship plan, a primary battery producer or primary battery  
15          stewardship organization shall hire an independent third party to conduct a  
16          one-time audit of the primary battery stewardship plan and plan operation. The  
17          auditor shall examine the effectiveness of the primary battery stewardship plan  
18          in collecting and recycling primary batteries. The independent auditor shall  
19          examine the cost-effectiveness of the plan and compare it to that of collection  
20          plans or programs for primary batteries in other jurisdictions. The independent

1 auditor shall submit the results of the audit to the Secretary as part of the  
2 annual report required under subsection (a) of this section.

3 § 7586. AGENCY RESPONSIBILITIES; APPROVAL OF PLANS

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

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



1        (c) Public notice. The Secretary shall post all proposed primary battery  
2        stewardship plans and all proposed amendments to a primary battery  
3        stewardship plan on the Agency’s website for 30 days from the date the  
4        application for a plan or a plan amendment is deemed complete by the  
5        Secretary, subject to the confidentiality provisions of section 7592 of this title.

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

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

12       (f) Agency website. The Secretary shall maintain a website that includes a  
13       copy of all approved primary battery stewardship plans, the names of  
14       producers with approved plans, participation in approved plans, or other  
15       compliance with this chapter. The website shall list all of an approved primary  
16       battery producer’s brands covered by a primary battery stewardship plan filed  
17       with the Secretary. The Secretary shall update information on the website  
18       within 10 days of receipt of notice of any change to the listed information. The  
19       website shall list all known primary battery producers exempt from the  
20       requirements of this chapter under subsection 7582(d) of this title.

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

6        § 7587. RETAILER OBLIGATIONS

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

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

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

20           (2) the producer's primary battery stewardship plan expired or was  
21           revoked, and the retailer took possession of the in-store inventory of primary

1 batteries prior to the expiration or revocation of the producer's primary battery  
2 stewardship plan.

3 (c) Educational material. A producer or primary battery stewardship  
4 organization supplying primary batteries to a retailer shall provide the retailer  
5 with educational materials describing collection opportunities for primary  
6 batteries. The retailer shall make the educational materials available to  
7 consumers.

8 Subchapter 3. Registration of Rechargeable Battery

9 Stewardship Organization

10 § 7588. REGISTRATION OF RECHARGEABLE BATTERY

11 STEWARDSHIP ORGANIZATION

12 (a) A rechargeable battery steward or rechargeable battery stewardship  
13 organization shall register with the Secretary in order to seek reimbursement  
14 under subchapter 4 of this chapter.

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

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

19 (A) the name of a rechargeable battery steward implementing an  
20 individual program or a list of the producers participating in a rechargeable  
21 battery stewardship organization; and

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

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

7   Subchapter 4. Reimbursement

8           § 7589. REIMBURSEMENT; AUTHORIZATION

9           (a) Reimbursement of primary battery producers.

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

15           (A) the producer of the collected primary battery or the primary  
16 battery stewardship organization representing the producer of the collected  
17 primary battery; or

18           (B) the rechargeable battery steward responsible for the collected  
19 rechargeable batteries, or where the rechargeable battery steward responsible  
20 for the collected rechargeable batteries is participating in a rechargeable  
21 battery stewardship organization, the stewardship organization.

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

5           (b) Reimbursement of rechargeable battery stewardship organization. A  
6           registered rechargeable battery steward or rechargeable battery stewardship  
7           organization shall be entitled to reimbursement from the producer of the  
8           collected primary battery or the primary battery stewardship organization  
9           representing the producer of the collected primary battery.

10          (c) Direct costs. Under this subchapter, reimbursement shall be allowed  
11          only for those direct costs incurred in collecting the batteries subject to the  
12          reimbursement request. Direct costs include costs of collection, transport,  
13          recycling, and other methods of disposition identified in a primary battery  
14          stewardship plan approved pursuant to section 7586 of this title, plus an  
15          additional negotiated amount not to exceed 10 percent of the direct costs.

16          § 7590. REIMBURSEMENT PROCESS

17          (a) Reimbursement request.

18               (1) A primary battery producer, primary battery stewardship  
19               organization, or rechargeable battery stewardship organization that incurs  
20               reimbursable direct costs under section 7589 of this title shall submit a request  
21               to the producer of the collected primary battery or the primary battery

1 stewardship organization in which the producer is participating or the  
2 rechargeable battery stewardship organization responsible for the collected  
3 rechargeable battery.

4 (2) A producer or primary battery stewardship organization or  
5 rechargeable battery stewardship organization that receives a request for  
6 reimbursement may, prior to payment and within 30 days of receipt of the  
7 request for reimbursement, request an independent audit of submitted  
8 reimbursement costs.

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

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

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

5                           Subchapter 5. Private Right of Action

6           § 7591. PRIVATE RIGHT OF ACTION

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

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

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

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

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

4           (b) Action against producer with an approved primary battery stewardship  
5           plan. A producer or primary battery stewardship organization in compliance  
6           with the requirements of this chapter may bring a civil action for damages  
7           against another producer or primary battery stewardship organization in the  
8           State that is in compliance with the requirements of this chapter provided that  
9           the conditions of subsection (e) of this section have been met.

10          (c) Action against rechargeable battery stewardship organization. A  
11          producer or primary battery stewardship organization implementing an  
12          approved primary battery stewardship plan in compliance with the  
13          requirements of this chapter may bring a civil action for damages against a  
14          rechargeable battery stewardship organization registered by the Secretary  
15          provided that the conditions of subsection (e) of this section have been met.

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



1       (e) 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       (f) Action against individual producer or steward.

18           (1) A civil action under this section may be brought against an  
19       individual primary battery producer or an individual rechargeable battery  
20       steward only if the primary battery producer is implementing its own primary  
21       battery stewardship plan, the primary battery producer has failed to register to

1 participate in a primary battery stewardship plan, or the rechargeable battery  
2 steward is implementing its own registered rechargeable battery stewardship  
3 organization.

4 (2) A primary battery producer participating in an approved primary  
5 battery stewardship plan covering multiple producers or a rechargeable battery  
6 steward participating in a rechargeable battery stewardship organization  
7 representing multiple stewards shall not be sued individually for  
8 reimbursement.

9 (3) An action against a primary battery producer participating in a  
10 primary battery stewardship plan covering multiple producers or an action  
11 against a rechargeable battery steward participating in a rechargeable battery  
12 stewardship organization shall be brought against the stewardship organization  
13 implementing the plan.

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

18 (h) Damages; definitions. As used in this section, “damages” means the  
19 actual, direct costs a plaintiff producer, primary battery stewardship  
20 organization, or rechargeable battery stewardship organization incurs in  
21 collecting, handling, recycling, or properly disposing of primary batteries

1 reasonably identified as having originated from another primary battery  
2 producer, primary battery stewardship organization, or rechargeable battery  
3 stewardship organization.

4 Subchapter 6. General Provisions

5 § 7592. CONFIDENTIALITY OF SUBMITTED DATA

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

8 (1) Information protected under the Uniform Trade Secrets Act, as  
9 codified under 9 V.S.A. chapter 143, or under the trade secret exemption under  
10 1 V.S.A. § 317(c)(9) shall be exempt from public inspection and copying under  
11 the Public Records Act.

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

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

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

6        § 7593. ANTITRUST; CONDUCT AUTHORIZED

7        (a) Activity authorized. A producer, group of producers, or primary battery  
8        stewardship organization implementing or participating in an approved  
9        primary battery stewardship plan under this chapter for the collection,  
10       transport, processing, and end-of-life management of primary batteries is  
11       individually or jointly immune from liability for the conduct under State laws  
12       relating to antitrust, restraint of trade, unfair trade practices, and other  
13       regulation of trade or commerce under 9 V.S.A. chapter 63, subchapter 1, to  
14       the extent that the conduct is reasonably necessary to plan, implement, and  
15       comply with the producer's, group of producers', or primary battery  
16       stewardship organization's chosen system for managing discarded primary  
17       batteries. This subsection shall also apply to conduct of a retailer or  
18       wholesaler participating in a producer or primary battery stewardship  
19       organization's approved primary battery stewardship plan when the conduct is  
20       necessary to plan and implement the producer's or primary battery stewardship  
21       organization's organized collection or recycling system for discarded batteries

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

6        § 7594. ADMINISTRATIVE FEE

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

11       (b) Disposition of fees. The fees collected under subsection (a) of this  
12       section shall be deposited in the Environmental Permit Fund under  
13       3 V.S.A. § 2805.

14       § 7595. RULEMAKING; PROCEDURE

15       The Secretary may adopt rules or procedures to implement the requirements  
16       of this chapter.

17       Sec. 2. AGENCY OF NATURAL RESOURCES REPORT ON

18                IMPLEMENTATION OF PRIMARY BATTERY STEWARDSHIP

19        On or before January 15, 2019, the Agency of Natural Resources shall  
20        submit to the House and Senate Committees on Natural Resources and Energy

1 a report on the progress of the primary battery stewardship program under  
2 10 V.S.A. chapter 168. The report shall include:

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

5 (2) the percentage of collected batteries not covered by or attributable to  
6 a primary battery producer implementing an approved primary battery  
7 stewardship plan or participating in an approved primary battery stewardship  
8 organization; and

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

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

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

17 \* \* \*

18 (22) 10 V.S.A. chapter 164A, collection and disposal of  
19 mercury-containing lamps; ~~and~~

1 (23) 24 V.S.A. § 2202a, relating to a municipality's adoption and  
2 implementation of a solid waste implementation plan that is consistent with the  
3 State Solid Waste Plan; and

4 (24) 10 V.S.A. chapter 168, relating to the collection and disposal of  
5 primary batteries.

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

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

11 (1) The following provisions of this title:

12 \* \* \*

13 (Q) chapter 164A (collection and disposal of mercury-containing  
14 lamps).

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

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

17 (2) 29 V.S.A. chapter 11 (management of lakes and ponds).

18 (3) 24 V.S.A. chapter 61, subchapter 10 (relating to salvage yards).

19 Sec. 5. EFFECTIVE DATE

20 This act shall take effect on passage.

21

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

\_\_\_\_\_

Senator \_\_\_\_\_

FOR THE COMMITTEE