

SHOWING PRBA/CALL2RECYCLE PROPOSED REVISIONS 4/11/14

BATTERIES

VERSION: Engrossed
March 27, 2014
Klein, Tony

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SUMMARY: This bill proposes to establish a product stewardship program for discarded batteries.

TEXT:

H.695

Introduced by Representative Klein of East Montpelier

Referred to Committee on

Date:

Subject: Conservation and development; solid waste; product stewardship; batteries

Statement of purpose of bill as introduced: This bill proposes to establish a product stewardship program for discarded batteries.

An act relating to establishing a product stewardship program for primary batteries

It is hereby enacted by the General Assembly of the State of Vermont:

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

CHAPTER 168. PRODUCT STEWARDSHIP FOR PRIMARY BATTERIES AND RECHARGEABLE BATTERIES

Subchapter 1. Definitions

§ 7581. DEFINITIONS

As used in this chapter:

(1) "Agency" means the Agency of Natural Resources.

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

(3) "Calendar year" means the period commencing January 1 and ending December 31 of the same year.

(4) "Collection rate" means a percentage by weight that each producer or primary battery stewardship organization collects by an established date. The collection rate shall be calculated by dividing the total weight of the primary batteries that are collected during a calendar year by the average annual weight of primary batteries that were estimated to have been sold in the State by participating producers during the previous three calendar years. Estimates of primary batteries sold in the State may be based on a reasonable pro rata calculation based on national sales.

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

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

(7) "Covered consumer product" means a consumer product that contains or is packed with a primary battery at the time it is delivered to a retail purchaser.

(8) "Discarded primary battery" means a primary battery that is no longer used for its manufactured purpose.

(89) "Easily removable" means readily detachable by a person without the use of tools or with the use of common household tools.

(910) "Participate" means to appoint a primary battery stewardship organization or rechargeable battery stewardship organization to operate on behalf of oneself and to have that appointment accepted by the stewardship organization.

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

(112) "Primary battery producer" or "producer" means one of the following with regard to a primary battery that is sold, offered for sale, or distributed in the State as a replacement primary battery or in or with a covered consumer product:

(A) a person who manufactures a-the replacement primary battery or covered consumer product and who sells, of-

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fers for sale, or distributes ~~that it primary battery~~ in the State under the person's own name or brand;

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

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

~~(132)~~ "Primary battery stewardship organization" means an organization ~~appointed in which by~~ one or more producers ~~are participating and which is~~ acting as an agent on behalf of ~~that~~ that producer or ~~those~~ those producers to design, submit, implement, and administer a primary battery stewardship plan under this chapter.

~~(4314)~~ "Primary battery stewardship plan" or "plan" means a plan submitted to the Secretary pursuant to section 7584 of this title by an individual producer or a primary battery stewardship organization.

~~(4415)~~ "Program" or "stewardship program" means the system for the collection, transportation, recycling, and disposal of primary batteries implemented pursuant to an approved primary battery stewardship plan.

~~(4516)~~(A) "Rechargeable battery" means:

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

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

(B) "Rechargeable battery" shall not mean:

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

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

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

(I) is sealed;

(II) contains no liquid electrolyte; and

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

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

(4617) "Rechargeable battery steward" means a person who:

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

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

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

(4718) "Rechargeable battery stewardship organization" means an entity registered by the Secretary pursuant to section 7588 of this title that is either a single rechargeable battery steward operating on its own behalf; an organization ~~operating appointed by one or more rechargeable battery stewards to operate~~ a plan in which ~~each rechargeable battery~~ stewards ~~are-is~~ participating; or a retailer or franchisor of retailers operating a plan on behalf of itself or its franchisees.

(4819) "Rechargeable product" means a consumer product that contains or is packaged with a rechargeable battery at the time the product is sold, offered for sale, or distributed in the State. "Rechargeable product" shall not mean:

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

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

(4920) "Recycling" means any process by which discarded products, components, and by-products are transformed into new usable or marketable materials in a manner in which the original products may lose their identity, but does not include energy recovery or energy generation by means of combusting discarded products, components, and by products with or without other waste products.

(210) "~~Replacement primary battery" means a primary battery intended for use as a replacement for a battery sold in a covered consumer product, or to power a consumer product that requires a primary battery to operate but is not supplied by a retailer containing or packaged with a primary battery.~~

(22) "Retailer" means a person who offers a primary battery for sale to any consumer or business at retail in the

State through any means, including remote offerings such as sales outlets, catalogues, or an Internet website.

~~(2423)~~ "Secretary" means the Secretary of Natural Resources.

Subchapter 2. Primary Battery Stewardship Program

§ 7582. SALE OF PRIMARY BATTERIES

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

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

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

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

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

(c) New producers.

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

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

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

§ 7583. PRIMARY BATTERY STEWARDSHIP ORGANIZATION; REQUIREMENTS; REGISTRATION

(a) Participation in a primary battery stewardship organization. A producer of primary batteries may meet the re-

quirements of this chapter by participating in a primary battery stewardship organization that undertakes the producer's responsibilities under sections 7582, 7584, and 7585 of this title.

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

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

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

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

(c) Registration requirements.

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

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

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

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

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

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

§ 7584. PRIMARY BATTERY STEWARDSHIP PLAN

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 7585. ANNUAL REPORT; PLAN AUDIT

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

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

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

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

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

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

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

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

(b) Plan audit. After five years of implementation of an approved primary battery stewardship plan, a primary battery producer or primary battery stewardship organization shall hire an independent third party to conduct a one-time audit of the primary battery stewardship plan and plan operation. The auditor shall examine the effectiveness of the primary battery stewardship plan in collecting and recycling primary batteries. The independent auditor shall examine the cost-effectiveness of the plan and compare it to that of collection plans or programs for primary batteries in other jurisdictions. The independent auditor shall submit the results of the audit to the Secretary as part of the annual report required under subsection (a) of this section.

§ 7586. AGENCY RESPONSIBILITIES; APPROVAL OF PLANS

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

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

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

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

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

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

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

§ 7587. RETAILER OBLIGATIONS

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

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

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

(2) the producer's primary battery stewardship plan expired or was revoked, and the retailer took possession of the in-store inventory of primary batteries prior to the expiration or revocation of the producer's primary battery stewardship plan.

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

Subchapter 3. Registration of Rechargeable Battery Stewardship Organization

§ 7588. REGISTRATION OF RECHARGEABLE BATTERY STEWARDSHIP ORGANIZATION

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

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

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

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

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

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

Subchapter 4. Reimbursement

§ 7589. REIMBURSEMENT; AUTHORIZATION

(a) Reimbursement of primary battery producers.

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

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

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

(2) Reimbursement may be requested by a collecting primary battery producer or primary battery stewardship organization only after the requesting at producer has collected a sufficient number of used primary batteries that originated from any producer to achieve the collection rate performance goal approved by the Secretary under section 7584 of this title.

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

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

§ 7590. REIMBURSEMENT PROCESS

(a) Reimbursement request.

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

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

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

(4) If the independent audit confirms the reasonableness of the reimbursement request, the producer ~~or~~ primary battery stewardship organization, ~~or rechargeable battery stewardship organization~~ requesting the audit (A) shall pay the cost of the audit and the amount of the reimbursement calculated by the independent auditor and (B) after making the payments required by Subsection 7590(a)(4)(A) may bring suit under Section 7591 for refund of those amounts the payor believes unreasonable.

(5) If the independent audit indicates the reimbursement request was not reasonable, the producer or primary battery stewardship organization that initiated the reimbursement request shall pay the cost of the audit and the amount of the reimbursement calculated by the independent auditor. The requestor may bring suit under Section 7591 to recover any costs that the independent audit found unreasonable.

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

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Subchapter 5. Private Right of Action

§ 7591. PRIVATE RIGHT OF ACTION

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

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

(2) the producer from whom damages are sought:

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

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

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

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

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

~~(e)~~ Condition precedent to cause of action. Except as authorized under subsection (a) of this section, a cause of action under this section shall be allowed only in the following circumstances:

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(1) ~~by a plaintiff~~ producer, primary battery stewardship organization or rechargeable battery stewardship organization ~~that~~ submitted a reimbursement request to another producer, primary battery stewardship organization, or rechargeable battery stewardship organization under subchapter 4 of this chapter; ~~and~~

~~(2) the plaintiff producer, primary battery stewardship organization or rechargeable battery stewardship organization does did~~ not receive full reimbursement within:

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

(~~B~~ii) 60 days after completion of an audit if an independent audit is requested under subchapter 4 of this chapter, and the audit confirms the validity of the reimbursement request; ~~or~~

(2). By a producer, primary battery stewardship organization or rechargeable battery stewardship organization that has made a payment directed by an independent auditor appointed under Subchapter 4 but does not believe the payment required by the auditor was reasonable

(e) Action against individual producer or steward.

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

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

(3) An action seeking reimbursement for costs of handling batteries originating from ~~against~~ a primary battery producer participating in a rechargeable battery stewardship plan covering multiple producers ~~or an action against a rechargeable battery stewards participating in a rechargeable battery stewardship organization in the first instance~~ shall be brought against the stewardship organization implementing the plan. If, after obtaining a judgment in that action, the plaintiff cannot obtain full payment of the judgment, the plaintiff may sue the individual primary battery producer for any remaining unreimbursed costs. Such cause of action shall accrue ninety days after entry of judgment against the rechargeable battery stewardship organization implementing the plan.

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

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(hg) Damages; definitions. As used in this section, "damages" means

(1) as to a plaintiff seeking recovery and subject to Subsections (a) or (d)(1)(A) of this Section 7591, the actual, direct costs a plaintiff producer, primary battery stewardship organization, or rechargeable battery stewardship organization incurs in collecting, handling, recycling, or properly disposing of primary batteries reasonably identified as having originated from another primary battery producer, primary battery stewardship organization, or rechargeable battery stewardship organization that have not been paid after review by an independent audit in accordance with Section 4, plus the plaintiff's costs and attorney's fees and a penalty sum determined by the Court, but not more than three times the unpaid costs; or

(2) as to a plaintiff seeking recovery under Subsection (d)(1)(B) of this Section 7591, any costs the plaintiff paid in reimbursement after an audit in accordance with Section 4 which the plaintiff establishes were unreasonable. -

Subchapter 6. General Provisions

§ 7592. CONFIDENTIALITY OF SUBMITTED DATA

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

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

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

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

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

§ 7593. ANTITRUST; CONDUCT AUTHORIZED

(a) Activity authorized. A producer, group of producers, or primary battery stewardship organization implementing or participating in an approved primary battery stewardship plan under this chapter for the collection, transport, pro-

cessing, and end-of-life management of primary batteries is individually or jointly immune from liability for the conduct under State laws relating to antitrust, restraint of trade, unfair trade practices, and other regulation of trade or commerce under 9 V.S.A. chapter 63, subchapter 1, to the extent that the conduct is reasonably necessary to plan, implement, and comply with the producer's, group of producers', or primary battery stewardship organization's chosen system for managing discarded primary batteries. This subsection shall also apply to conduct of a retailer or wholesaler participating in a producer or primary battery stewardship organization's approved primary battery stewardship plan when the conduct is necessary to plan and implement the producer's or primary battery stewardship organization's organized collection or recycling system for discarded batteries

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

§ 7594. ADMINISTRATIVE FEE

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

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

§ 7595. RULEMAKING; PROCEDURE

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

Sec. 2. AGENCY OF NATURAL RESOURCES REPORT ON IMPLEMENTATION OF PRIMARY BATTERY STEWARDSHIP

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

- (1) the amount, by weight, of primary batteries and rechargeable batteries collected under approved primary battery stewardship plans;
- (2) the percentage of collected batteries not covered by or attributable to a primary battery producer implementing an approved primary battery stewardship plan or participating in an approved primary battery stewardship organization; and

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

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

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

* * *

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

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

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

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

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

(1) The following provisions of this title:

* * *

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

(R) chapter 32 (flood hazard areas).

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

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

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

Sec. 5. EFFECTIVE DATE

This act shall take effect on passage.

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