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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 2267

03/07/2019 Authored by Hansen, Fischer and Becker-Finn
The bill was read for the first time and referred to the Committee on Environment and Natural Resources Policy

1.1 A bill for an act
1.2 relating to environment; providing for carpet product stewardship program;
1.3 requiring a report; amending Minnesota Statutes 2018, sections 13.7411, subdivision
1.4 4; 115A.142; proposing coding for new law in Minnesota Statutes, chapter 115A.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2018, section 13.7411, subdivision 4, is amended to read:

1.7 Subd. 4. Waste management. (a) Product stewardship program. Trade secret and
1.8 sales data information submitted to the Pollution Control Agency under the product
1.9 stewardship program programs is classified under section sections 115A.141 and 115A.1415.

1.10 (b) Transfer station data. Data received by a county or district from a transfer station
1.11 under section 115A.84, subdivision 5, are classified under that section.

1.12 (c) Solid waste records. Records of solid waste facilities received, inspected, or copied
1.13 by a county pursuant to section 115A.882 are classified pursuant to section 115A.882,
1.14 subdivision 3.

1.15 (d) Customer lists. Customer lists provided to counties or cities by solid waste collectors
1.16 are classified under section 115A.93, subdivision 5.

1.17 Sec. 2. [115A.141] CARPET PRODUCTS; STEWARDSHIP PROGRAM;
1.18 STEWARDSHIP PLAN.

1.19 Subdivision 1. Definitions. For purposes of this section, the following terms have the
1.20 meanings given:

2.1 (1) "brand" means a name, symbol, word, or mark that identifies carpet, rather than its
2.2 components, and attributes the carpet to the owner or licensee of the brand as the producer;

2.3 (2) "carpet" means a manufactured article that is used in commercial or single or
2.4 multifamily residential buildings, is affixed or placed on the floor or building walking
2.5 surface as a decorative or functional building interior or exterior feature, and is primarily
2.6 constructed of a top visible surface of synthetic face fibers or yarns or tufts attached to a
2.7 backing system derived from synthetic or natural materials. Carpet includes, but is not
2.8 limited to, a commercial or residential broadloom carpet or modular carpet tiles. Carpet
2.9 includes a pad or underlayment used in conjunction with a carpet. Carpet does not include
2.10 handmade rugs, area rugs, or mats;

2.11 (3) "discarded carpet" means carpet that is no longer used for its manufactured purpose;

2.12 (4) "producer" means a person that:

2.13 (i) has legal ownership of the brand, brand name, or cobrand of carpet sold in the state;

2.14 (ii) imports carpet branded by a producer that meets item (i) when the producer has no
2.15 physical presence in the United States;

2.16 (iii) if items (i) and (ii) do not apply, makes unbranded carpet that is sold in the state;

2.17 or

2.18 (iv) sells carpet at wholesale or retail, does not have legal ownership of the brand, and
2.19 elects to fulfill the responsibilities of the producer for the carpet;

2.20 (5) "recycling" means the process of collecting and preparing recyclable materials and
2.21 reusing the materials in their original form or using them in manufacturing processes that
2.22 do not cause the destruction of recyclable materials in a manner that precludes further use;

2.23 (6) "retailer" means any person who offers carpet for sale at retail in the state;

2.24 (7) "reuse" means donating or selling a collected carpet back into the market for its
2.25 original intended use, when the carpet retains its original purpose and performance
2.26 characteristics;

2.27 (8) "sale" or "sell" means transfer of title of carpet for consideration, including a remote
2.28 sale conducted through a sales outlet, catalog, website, or similar electronic means. Sale or
2.29 sell includes a lease through which carpet is provided to a consumer by a producer,
2.30 wholesaler, or retailer;

2.31 (9) "stewardship assessment" means the amount added to the purchase price of carpet
2.32 sold in the state that is necessary to cover the cost of collecting, transporting, and processing

3.1 postconsumer carpets by the producer or stewardship organization pursuant to a product
3.2 stewardship program;

3.3 (10) "stewardship organization" means an organization appointed by one or more
3.4 producers to act as an agent on behalf of the producer to design, submit, and administer a
3.5 product stewardship program under this section; and

3.6 (11) "stewardship plan" means a detailed plan describing the manner in which a product
3.7 stewardship program under subdivision 2 will be implemented.

3.8 Subd. 2. **Product stewardship program.** For all carpet sold in the state, producers must,
3.9 individually or through a stewardship organization, implement and finance a statewide
3.10 product stewardship program that manages carpet by reducing carpet's waste generation,
3.11 promoting its reuse and recycling, and providing for negotiation and execution of agreements
3.12 to collect, transport, and process carpet for end-of-life recycling and reuse.

3.13 Subd. 3. **Requirement for sale.** (a) On and after July 1, 2021, no producer, wholesaler,
3.14 or retailer may sell carpet or offer carpet for sale in the state unless the carpet's producer
3.15 participates in an approved stewardship plan, either individually or through a stewardship
3.16 organization.

3.17 (b) Each producer must operate a product stewardship program approved by the agency
3.18 or enter into an agreement with a stewardship organization to operate, on the producer's
3.19 behalf, a product stewardship program approved by the agency.

3.20 Subd. 4. **Requirement to submit plan.** (a) On or before March 1, 2021, and before
3.21 offering carpet for sale in the state, a producer must submit a stewardship plan to the agency
3.22 and receive approval of the plan or must submit documentation to the agency that
3.23 demonstrates the producer has entered into an agreement with a stewardship organization
3.24 to be an active participant in an approved product stewardship program as described in
3.25 subdivision 2. A stewardship plan must include all elements required under subdivision 5.

3.26 (b) At least every three years, a producer or stewardship organization operating a product
3.27 stewardship program must update the stewardship plan and submit the updated plan to the
3.28 agency for review and approval.

3.29 (c) It is the responsibility of the entities responsible for each stewardship plan to notify
3.30 the agency within 30 days of any significant changes or modifications to the plan or its
3.31 implementation. Within 30 days of the notification, a written plan revision must be submitted
3.32 to the agency for review and approval.

3.33 Subd. 5. **Stewardship plan content.** A stewardship plan must contain:

- 4.1 (1) certification that the product stewardship program will accept all discarded carpet
4.2 regardless of which producer produced the carpet and its individual components;
- 4.3 (2) contact information for the individual and the entity submitting the plan and for all
4.4 producers participating in the product stewardship program;
- 4.5 (3) a description of the methods by which discarded carpet will be collected in all areas
4.6 in the state without relying on end-of-life fees, including an explanation of how the collection
4.7 system will be convenient and adequate to serve the needs of small businesses and residents
4.8 in the seven-county metropolitan area initially and expanding to areas outside the
4.9 seven-county metropolitan area starting July 1, 2022;
- 4.10 (4) a description of how the adequacy of the collection program will be monitored and
4.11 maintained;
- 4.12 (5) the names and locations of collectors, transporters, and recycling facilities that will
4.13 manage discarded carpet;
- 4.14 (6) a description of how the discarded carpet and the carpet's components will be safely
4.15 and securely transported, tracked, and handled from collection through final recycling and
4.16 processing;
- 4.17 (7) a description of the method that will be used to reuse, deconstruct, or recycle the
4.18 discarded carpet to ensure that the product's components, to the extent feasible, are
4.19 transformed or remanufactured into finished products for use;
- 4.20 (8) a description of the promotion and outreach activities that will be used to encourage
4.21 participation in the collection and recycling programs and how the activities' effectiveness
4.22 will be evaluated and the program modified, if necessary;
- 4.23 (9) the proposed stewardship assessment. The producer or stewardship organization
4.24 must propose a stewardship assessment for any carpet sold in the state. The proposed
4.25 stewardship assessment must be reviewed by an independent auditor to ensure that the
4.26 assessment does not exceed the costs of the product stewardship program, and the
4.27 independent auditor must recommend an amount for the stewardship assessment;
- 4.28 (10) evidence of adequate insurance and financial assurance that may be required for
4.29 collection, handling, and disposal operations;
- 4.30 (11) five-year performance goals, including an estimate of the percentage of discarded
4.31 carpet that will be collected, reused, and recycled during each of the first five years of the
4.32 stewardship plan. The performance goals must include a specific escalating goal for the

5.1 amount of discarded carpet that will be collected and recycled and reused during each year
5.2 of the plan. The performance goals must be based on:

5.3 (i) the most recent collection data available for the state;

5.4 (ii) the amount of carpet disposed of annually;

5.5 (iii) the weight of the carpet that is expected to be available for collection annually; and

5.6 (iv) actual collection data from other existing stewardship programs.

5.7 The stewardship plan must state the methodology used to determine these goals;

5.8 (12) carpet design changes that will be considered to reduce toxicity, water use, or energy
5.9 use or to increase recycled content, recyclability, or carpet longevity; and

5.10 (13) a discussion of market development opportunities to expand the use of recovered
5.11 carpet, with consideration of expanding processing activity near areas of collection.

5.12 Subd. 6. **Consultation required.** (a) Each stewardship organization or individual producer
5.13 submitting a stewardship plan must consult with stakeholders, including retailers, installers,
5.14 collectors, recyclers, local government, customers, and citizens, during development of the
5.15 plan; solicit stakeholder comments; and attempt to address any stakeholder concerns
5.16 regarding the plan before submitting the plan to the agency for review.

5.17 (b) The producer or stewardship organization must invite comments from local
5.18 governments, communities, and citizens to report their satisfaction with services, including
5.19 education and outreach, provided by the product stewardship program. The information
5.20 must be submitted to the agency and used by the agency in reviewing proposed updates or
5.21 changes to the stewardship plan.

5.22 Subd. 7. **Agency review and approval.** (a) Within 90 days after receiving a proposed
5.23 stewardship plan, the agency must determine whether the plan complies with subdivision
5.24 5. If the agency approves a plan, the agency must notify the applicant of the plan approval
5.25 in writing. If the agency rejects a plan, the agency must notify the applicant in writing of
5.26 the reasons for rejecting the plan. An applicant whose plan is rejected by the agency must
5.27 submit a revised plan to the agency within 60 days after receiving notice of rejection.

5.28 (b) Any proposed changes to a stewardship plan must be approved by the agency in
5.29 writing.

5.30 Subd. 8. **Plan availability.** All draft and approved stewardship plans must be placed on
5.31 the agency's website for at least 30 days and made available at the agency's headquarters
5.32 for public review and comment.

6.1 Subd. 9. **Conduct authorized.** A producer or stewardship organization that organizes
6.2 collection, transport, and processing of carpet under this section is immune from liability
6.3 for the conduct under state laws relating to antitrust, restraint of trade, unfair trade practices,
6.4 and other regulation of trade or commerce only to the extent that the conduct is necessary
6.5 to plan and implement the producer's or organization's chosen organized collection or
6.6 recycling system.

6.7 Subd. 10. **Producer responsibilities.** (a) On and after the date of implementation of a
6.8 product stewardship program under this section, a producer of carpet must add the
6.9 stewardship assessment, as established according to subdivision 5, clause (9), to the cost of
6.10 the carpet sold to retailers and distributors in the state by the producer.

6.11 (b) Producers of carpet or the stewardship organization must provide consumers with
6.12 educational materials regarding the stewardship assessment and product stewardship program.
6.13 The materials must include, but are not limited to, information regarding available end-of-life
6.14 management options for carpet offered through the product stewardship program and
6.15 information that notifies consumers that a charge for operating the product stewardship
6.16 program is included in the purchase price of carpet sold in the state.

6.17 Subd. 11. **Retailer responsibilities.** (a) On and after July 1, 2021, no carpet may be sold
6.18 in the state unless the carpet's producer is participating in an approved stewardship plan.

6.19 (b) On and after the implementation date of a product stewardship program under this
6.20 section, each retailer or distributor, as applicable, must add the amount of the stewardship
6.21 assessment to the purchase price of all carpet sold in the state.

6.22 (c) Any retailer may participate, on a voluntary basis, as a designated collection point
6.23 pursuant to a product stewardship program under this section and in accordance with
6.24 applicable law.

6.25 (d) No retailer or distributor shall be found to be in violation of this subdivision if, on
6.26 the date the carpet was ordered from the producer or its agent, the producer was listed as
6.27 compliant on the agency's website according to subdivision 14.

6.28 Subd. 12. **Stewardship reports.** Beginning October 1, 2022, producers of carpet sold
6.29 in the state must individually or through a stewardship organization submit an annual report
6.30 to the agency describing the product stewardship program. At a minimum, the report must
6.31 contain:

6.32 (1) a description of the methods used to collect, transport, and process carpet in all
6.33 regions of the state;

7.1 (2) the weight of all carpet collected in all regions of the state and a comparison to the
7.2 performance goals and recycling rates established in the stewardship plan;

7.3 (3) the amount of unwanted carpet collected in the state by method of disposition,
7.4 including reuse, recycling, and other methods of processing;

7.5 (4) identification of the facilities processing carpet and the number and weight processed
7.6 at each facility;

7.7 (5) an evaluation of the program's funding mechanism;

7.8 (6) samples of educational materials provided to consumers and an evaluation of the
7.9 effectiveness of the materials and the methods used to disseminate the materials; and

7.10 (7) a description of progress made toward achieving carpet design changes according
7.11 to subdivision 5, clause (12).

7.12 Subd. 13. **Sales information.** Sales information provided to the commissioner under
7.13 this section is classified as private or nonpublic data, as specified in section 115A.06,
7.14 subdivision 13.

7.15 Subd. 14. **Agency responsibilities.** The agency must provide, on its website, a list of
7.16 all compliant producers and brands participating in stewardship plans that the agency has
7.17 approved and a list of all producers and brands the agency has identified as noncompliant
7.18 with this section.

7.19 Subd. 15. **Local government responsibilities.** (a) A city, county, or other public agency
7.20 may choose to participate voluntarily in a carpet product stewardship program.

7.21 (b) Cities, counties, and other public agencies are encouraged to work with producers
7.22 and stewardship organizations to assist in meeting product stewardship program recycling
7.23 obligations, by providing education and outreach or using other strategies.

7.24 (c) A city, county, or other public agency that participates in a product stewardship
7.25 program must report for the first year of the program to the agency using the reporting form
7.26 provided by the agency on the cost savings as a result of participation and describe how the
7.27 savings were used.

7.28 Subd. 16. **Administrative fee.** (a) The stewardship organization or individual producer
7.29 submitting a stewardship plan must pay the agency an annual administrative fee. The agency
7.30 must set the fee at an amount that, when paid by every stewardship organization or individual
7.31 producer that submits a stewardship plan, is adequate to cover the agency's full costs of
7.32 administering and enforcing this section. The agency may establish a variable fee based on

8.1 relevant factors, including, but not limited to, the portion of carpet sold in the state by
8.2 members of the organization compared to the total amount of carpet sold in the state by all
8.3 organizations submitting a stewardship plan.

8.4 (b) The total amount of annual fees collected under this subdivision must not exceed
8.5 the amount necessary to cover costs incurred by the agency in connection with administering
8.6 and enforcing this section.

8.7 (c) The agency must identify the direct program development or regulatory costs it incurs
8.8 under this section before stewardship plans are submitted and must establish a fee in an
8.9 amount adequate to cover those costs, which must be paid by a stewardship organization
8.10 or individual producer that submits a stewardship plan.

8.11 (d) A stewardship organization or individual producer subject to this subdivision must
8.12 pay the agency's administrative fee under paragraph (a) on or before July 1, 2021, and
8.13 annually thereafter, and the agency's onetime development fee under paragraph (c) on or
8.14 before July 1 the year after submitting a stewardship plan. Each year after the initial payment,
8.15 the annual administrative fee may not exceed five percent of the aggregate stewardship
8.16 assessment collected for the preceding calendar year.

8.17 (e) The agency must deposit the fees collected under this section into a product
8.18 stewardship account.

8.19 Sec. 3. Minnesota Statutes 2018, section 115A.142, is amended to read:

8.20 **115A.142 REPORT TO LEGISLATURE AND GOVERNOR.**

8.21 As part of the report required under section 115A.121, the commissioner of the Pollution
8.22 Control Agency shall provide a report to the governor and the legislature on the
8.23 implementation of ~~section~~ sections 115A.141 and 115A.1415.

8.24 Sec. 4. **EFFECTIVE DATE.**

8.25 Sections 1 to 3 are effective July 1, 2019.