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State of Minnesota

HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. **865**

- 02/25/2013 Authored by Sundin, Fischer and Hortman
The bill was read for the first time and referred to the Committee on Environment and Natural Resources Policy
- 03/06/2013 Adoption of Report: Pass as Amended and re-referred to the Committee on Commerce and Consumer Protection Finance and Policy
- 03/13/2013 Adoption of Report: Pass as Amended and Read Second Time
By motion, re-referred to the Committee on Civil Law
- 03/20/2013 Adoption of Report: Pass as Amended and re-referred to the Committee on Judiciary Finance and Policy
- 03/21/2013 Adoption of Report: Pass and re-referred to the Committee on Environment, Natural Resources and Agriculture Finance

1.1 A bill for an act
1.2 relating to environment; providing for product stewardship programs; requiring a
1.3 report; proposing coding for new law in Minnesota Statutes, chapter 115A.

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

1.5 Section 1. **[115A.141] CARPET PRODUCT STEWARDSHIP PROGRAM;**
1.6 **STEWARDSHIP PLAN.**

1.7 Subdivision 1. **Definitions.** For purposes of this section, the following terms have
1.8 the meanings given:

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

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

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

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

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

1.23 (ii) imports carpet branded by a producer that meets subclause (i) when the producer
1.24 has no physical presence in the United States;

2.1 (iii) if subclauses (i) and (ii) do not apply, makes unbranded carpet that is sold
2.2 in the state; or

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

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

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

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

2.12 (8) "sale" or "sell" means transfer of title of carpet for consideration, including a
2.13 remote sale conducted through a sales outlet, catalog, Web site, or similar electronic
2.14 means. Sale or sell includes a lease through which carpet is provided to a consumer by a
2.15 producer, wholesaler, or retailer;

2.16 (9) "stewardship assessment" means the amount added to the purchase price of
2.17 carpet sold in the state that is necessary to cover the cost of collecting, transporting, and
2.18 processing postconsumer carpets by the producer or stewardship organization pursuant to
2.19 a product stewardship program;

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

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

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

2.30 Subd. 3. **Requirement for sale.** (a) On and after July 1, 2015, no producer,
2.31 wholesaler, or retailer may sell carpet or offer carpet for sale in the state unless the carpet's
2.32 producer participates in an approved stewardship plan, either individually or through a
2.33 stewardship organization.

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

3.1 Subd. 4. Requirement to submit plan. (a) On or before March 1, 2015, and before
3.2 offering carpet for sale in the state, a producer must submit a stewardship plan to the
3.3 agency and receive approval of the plan or must submit documentation to the agency that
3.4 demonstrates the producer has entered into an agreement with a stewardship organization
3.5 to be an active participant in an approved product stewardship program as described in
3.6 subdivision 2. A stewardship plan must include all elements required under subdivision 5.

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

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

3.14 Subd. 5. Stewardship plan content. A stewardship plan must contain:

3.15 (1) certification that the product stewardship program will accept all discarded carpet
3.16 regardless of which producer produced the carpet and its individual components;

3.17 (2) contact information for the individual and the entity submitting the plan and for
3.18 all producers participating in the product stewardship program;

3.19 (3) a description of the methods by which discarded carpet will be collected in all
3.20 areas in the state without relying on end-of-life fees, including an explanation of how the
3.21 collection system will be convenient and adequate to serve the needs of small businesses
3.22 and residents in the seven-county metropolitan area initially and expanding to areas
3.23 outside of the seven-county metropolitan area starting July 1, 2016;

3.24 (4) a description of how the adequacy of the collection program will be monitored
3.25 and maintained;

3.26 (5) the names and locations of collectors, transporters, and recycling facilities that
3.27 will manage discarded carpet;

3.28 (6) a description of how the discarded carpet and the carpet's components will
3.29 be safely and securely transported, tracked, and handled from collection through final
3.30 recycling and processing;

3.31 (7) a description of the method that will be used to reuse, deconstruct, or recycle
3.32 the discarded carpet to ensure that the product's components, to the extent feasible, are
3.33 transformed or remanufactured into finished products for use;

3.34 (8) a description of the promotion and outreach activities that will be used to
3.35 encourage participation in the collection and recycling programs and how the activities'
3.36 effectiveness will be evaluated and the program modified, if necessary;

4.1 (9) the proposed stewardship assessment. The producer or stewardship organization
 4.2 shall propose a stewardship assessment for any carpet sold in the state. The proposed
 4.3 stewardship assessment shall be reviewed by an independent auditor to ensure that
 4.4 the assessment does not exceed the costs of the product stewardship program and the
 4.5 independent auditor shall recommend an amount for the stewardship assessment;

4.6 (10) evidence of adequate insurance and financial assurance that may be required for
 4.7 collection, handling, and disposal operations;

4.8 (11) five-year performance goals, including an estimate of the percentage of
 4.9 discarded carpet that will be collected, reused, and recycled during each of the first five
 4.10 years of the stewardship plan. The performance goals must include a specific escalating
 4.11 goal for the amount of discarded carpet that will be collected and recycled and reused
 4.12 during each year of the plan. The performance goals must be based on:

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

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

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

4.16 and

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

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

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

4.21 (13) a discussion of market development opportunities to expand use of recovered
 4.22 carpet, with consideration of expanding processing activity proximate to areas of collection.

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

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

4.33 Subd. 7. **Agency review and approval.** (a) Within 90 days after receipt of a proposed
 4.34 stewardship plan, the agency shall determine whether the plan complies with subdivision
 4.35 5. If the agency approves a plan, the agency shall notify the applicant of the plan approval
 4.36 in writing. If the agency rejects a plan, the agency shall notify the applicant in writing of

5.1 the reasons for rejecting the plan. An applicant whose plan is rejected by the agency must
5.2 submit a revised plan to the agency within 60 days after receiving notice of rejection.

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

5.5 Subd. 8. **Plan availability.** All draft and approved stewardship plans shall be
5.6 placed on the agency's Web site for at least 30 days and made available at the agency's
5.7 headquarters for public review and comment.

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

5.14 Subd. 10. **Responsibility of producers.** (a) On and after the date of implementation
5.15 of a product stewardship program under this section, a producer of carpet must add the
5.16 stewardship assessment, as established according to subdivision 5, clause (9), to the cost
5.17 of the carpet sold to retailers and distributors in the state by the producer.

5.18 (b) Producers of carpet or the stewardship organization shall provide consumers
5.19 with educational materials regarding the stewardship assessment and product stewardship
5.20 program. The materials must include, but are not limited to, information regarding available
5.21 end-of-life management options for carpet offered through the product stewardship
5.22 program and information that notifies consumers that a charge for the operation of the
5.23 product stewardship program is included in the purchase price of carpet sold in the state.

5.24 Subd. 11. **Responsibility of retailers.** (a) On and after July 1, 2015, no carpet may
5.25 be sold in the state unless the carpet's producer is participating in an approved stewardship
5.26 plan.

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

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

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

6.1 Subd. 12. **Stewardship reports.** Beginning October 1, 2016, producers of carpet
6.2 sold in the state must individually or through a stewardship organization submit an
6.3 annual report to the agency describing the product stewardship program. At a minimum,
6.4 the report must contain:

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

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

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

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

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

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

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

6.18 Subd. 13. **Sales information.** Sales information provided to the commissioner
6.19 under this section is classified as private or nonpublic data, as specified in section
6.20 115A.06, subdivision 13.

6.21 Subd. 14. **Agency responsibilities.** The agency shall provide, on its Web site, a
6.22 list of all compliant producers and brands participating in stewardship plans that the
6.23 agency has approved and a list of all producers and brands the agency has identified as
6.24 noncompliant with this section.

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

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

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

6.34 Subd. 16. **Administrative fee.** (a) The stewardship organization or individual
6.35 producer submitting a stewardship plan shall pay the agency an annual administrative
6.36 fee. The agency shall set the fee at an amount that, when paid by every stewardship

7.1 organization or individual producer that submits a stewardship plan, is adequate to cover
7.2 the agency's full costs of administering and enforcing this section. The agency may
7.3 establish a variable fee based on relevant factors, including, but not limited to, the portion
7.4 of carpet sold in the state by members of the organization compared to the total amount of
7.5 carpet sold in the state by all organizations submitting a stewardship plan.

7.6 (b) The total amount of annual fees collected under this subdivision must not
7.7 exceed the amount necessary to cover costs incurred by the agency in connection with the
7.8 administration and enforcement of this section.

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

7.13 (d) A stewardship organization or individual producer subject to this subdivision
7.14 must pay the agency's administrative fee under paragraph (a) on or before July 1, 2015,
7.15 and annually thereafter and the agency's onetime development fee under paragraph (c) on
7.16 or before July 1 the year following submission of a stewardship plan. Each year after the
7.17 initial payment, the annual administrative fee may not exceed five percent of the aggregate
7.18 stewardship assessment collected for the preceding calendar year.

7.19 (e) The agency shall deposit the fees collected under this section into a product
7.20 stewardship account.

7.21 **Sec. 2. [115A.1415] ARCHITECTURAL PAINT; PRODUCT STEWARDSHIP**
7.22 **PROGRAM; STEWARDSHIP PLAN.**

7.23 Subdivision 1. **Definitions.** For purposes of this section, the following terms have
7.24 the meanings given:

7.25 (1) "architectural paint" means interior and exterior architectural coatings sold in
7.26 containers of five gallons or less. Architectural paint does not include industrial coatings,
7.27 original equipment coatings, or specialty coatings;

7.28 (2) "brand" means a name, symbol, word, or mark that identifies architectural paint,
7.29 rather than its components, and attributes the paint to the owner or licensee of the brand as
7.30 the producer;

7.31 (3) "discarded paint" means architectural paint that is no longer used for its
7.32 manufactured purpose;

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

7.34 (i) has legal ownership of the brand, brand name, or cobrand of architectural paint
7.35 sold in the state;

8.1 (ii) imports architectural paint branded by a producer that meets subclause (i) when
8.2 the producer has no physical presence in the United States;

8.3 (iii) if subclauses (i) and (ii) do not apply, makes unbranded architectural paint
8.4 that is sold in the state; or

8.5 (iv) sells architectural paint at wholesale or retail, does not have legal ownership of
8.6 the brand, and elects to fulfill the responsibilities of the producer for the architectural paint;

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

8.10 (6) "retailer" means any person who offers architectural paint for sale at retail in
8.11 the state;

8.12 (7) "reuse" means donating or selling collected architectural paint back into the
8.13 market for its original intended use, when the architectural paint retains its original
8.14 purpose and performance characteristics;

8.15 (8) "sale" or "sell" means transfer of title of architectural paint for consideration,
8.16 including a remote sale conducted through a sales outlet, catalog, Web site, or similar
8.17 electronic means. Sale or sell includes a lease through which architectural paint is
8.18 provided to a consumer by a producer, wholesaler, or retailer;

8.19 (9) "stewardship assessment" means the amount added to the purchase price of
8.20 architectural paint sold in the state that is necessary to cover the cost of collecting,
8.21 transporting, and processing postconsumer architectural paint by the producer or
8.22 stewardship organization pursuant to a product stewardship program;

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

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

8.28 Subd. 2. **Product stewardship program.** For architectural paint sold in the state,
8.29 producers must, individually or through a stewardship organization, implement and
8.30 finance a statewide product stewardship program that manages the architectural paint by
8.31 reducing the paint's waste generation, promoting its reuse and recycling, and providing for
8.32 negotiation and execution of agreements to collect, transport, and process the architectural
8.33 paint for end-of-life recycling and reuse.

8.34 Subd. 3. **Requirement for sale.** (a) On and after July 1, 2014, or three months after
8.35 program plan approval, whichever is sooner, no producer, wholesaler, or retailer may sell

9.1 or offer for sale in the state architectural paint unless the paint's producer participates in an
9.2 approved stewardship plan, either individually or through a stewardship organization.

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

9.6 Subd. 4. **Requirement to submit plan.** (a) On or before March 1, 2014, and before
9.7 offering architectural paint for sale in the state, a producer must submit a stewardship
9.8 plan to the agency and receive approval of the plan or must submit documentation to the
9.9 agency that demonstrates the producer has entered into an agreement with a stewardship
9.10 organization to be an active participant in an approved product stewardship program as
9.11 described in subdivision 2. A stewardship plan must include all elements required under
9.12 subdivision 5.

9.13 (b) An amendment to the plan, if determined necessary by the commissioner, must
9.14 be submitted every five years.

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

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

9.20 (1) certification that the product stewardship program will accept all discarded
9.21 paint regardless of which producer produced the architectural paint and its individual
9.22 components;

9.23 (2) contact information for the individual and the entity submitting the plan, a list of
9.24 all producers participating in the product stewardship program, and the brands covered by
9.25 the product stewardship program;

9.26 (3) a description of the methods by which the discarded paint will be collected in all
9.27 areas in the state without relying on end-of-life fees, including an explanation of how the
9.28 collection system will be convenient and adequate to serve the needs of small businesses
9.29 and residents in both urban and rural areas on an ongoing basis and a discussion of how
9.30 the existing household hazardous waste infrastructure will be considered when selecting
9.31 collection sites;

9.32 (4) a description of how the adequacy of the collection program will be monitored
9.33 and maintained;

9.34 (5) the names and locations of collectors, transporters, and recyclers that will
9.35 manage discarded paint;

10.1 (6) a description of how the discarded paint and the paint's components will be
10.2 safely and securely transported, tracked, and handled from collection through final
10.3 recycling and processing;

10.4 (7) a description of the method that will be used to reuse, deconstruct, or recycle
10.5 the discarded paint to ensure that the paint's components, to the extent feasible, are
10.6 transformed or remanufactured into finished products for use;

10.7 (8) a description of the promotion and outreach activities that will be used to
10.8 encourage participation in the collection and recycling programs and how the activities'
10.9 effectiveness will be evaluated and the program modified, if necessary;

10.10 (9) the proposed stewardship assessment. The producer or stewardship organization
10.11 shall propose a uniform stewardship assessment for any architectural paint sold in the
10.12 state. The proposed stewardship assessment shall be reviewed by an independent auditor
10.13 to ensure that the assessment does not exceed the costs of the product stewardship program
10.14 and the independent auditor shall recommend an amount for the stewardship assessment.
10.15 The agency must approve the stewardship assessment;

10.16 (10) evidence of adequate insurance and financial assurance that may be required for
10.17 collection, handling, and disposal operations;

10.18 (11) five-year performance goals, including an estimate of the percentage of
10.19 discarded paint that will be collected, reused, and recycled during each of the first five
10.20 years of the stewardship plan. The performance goals must include a specific goal for the
10.21 amount of discarded paint that will be collected and recycled and reused during each year
10.22 of the plan. The performance goals must be based on:

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

10.24 (ii) the estimated amount of architectural paint disposed of annually;

10.25 (iii) the weight of the architectural paint that is expected to be available for collection
10.26 annually; and

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

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

10.29 (12) a discussion of the status of end markets for collected architectural paint and
10.30 what, if any, additional end markets are needed to improve the functioning of the program.

10.31 Subd. 6. **Consultation required.** Each stewardship organization or individual
10.32 producer submitting a stewardship plan must consult with stakeholders including
10.33 retailers, contractors, collectors, recyclers, local government, and customers during the
10.34 development of the plan.

10.35 Subd. 7. **Agency review and approval.** (a) Within 90 days after receipt of a proposed
10.36 stewardship plan, the agency shall determine whether the plan complies with subdivision

11.1 4. If the agency approves a plan, the agency shall notify the applicant of the plan approval
11.2 in writing. If the agency rejects a plan, the agency shall notify the applicant in writing of
11.3 the reasons for rejecting the plan. An applicant whose plan is rejected by the agency must
11.4 submit a revised plan to the agency within 60 days after receiving notice of rejection.

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

11.7 Subd. 8. **Plan availability.** All draft and approved stewardship plans shall be
11.8 placed on the agency's Web site for at least 30 days and made available at the agency's
11.9 headquarters for public review and comment.

11.10 Subd. 9. **Conduct authorized.** A producer or stewardship organization that
11.11 organizes collection, transport, and processing of architectural paint under this section
11.12 is immune from liability for the conduct under state laws relating to antitrust, restraint
11.13 of trade, unfair trade practices, and other regulation of trade or commerce only to the
11.14 extent that the conduct is necessary to plan and implement the producer's or organization's
11.15 chosen organized collection or recycling system.

11.16 Subd. 10. **Responsibility of producers.** (a) On and after the date of implementation
11.17 of a product stewardship program according to this section, a producer of architectural
11.18 paint must add the stewardship assessment, as established under subdivision 5, clause (9),
11.19 to the cost of architectural paint sold to retailers and distributors in the state by the producer.

11.20 (b) Producers of architectural paint or the stewardship organization shall provide
11.21 consumers with educational materials regarding the stewardship assessment and product
11.22 stewardship program. The materials must include, but are not limited to, information
11.23 regarding available end-of-life management options for architectural paint offered through
11.24 the product stewardship program and information that notifies consumers that a charge
11.25 for the operation of the product stewardship program is included in the purchase price of
11.26 architectural paint sold in the state.

11.27 Subd. 11. **Responsibility of retailers.** (a) On and after July 1, 2014, or three months
11.28 after program plan approval, whichever is sooner, no architectural paint may be sold in the
11.29 state unless the paint's producer is participating in an approved stewardship plan.

11.30 (b) On and after the implementation date of a product stewardship program
11.31 according to this section, each retailer or distributor, as applicable, must add the amount of
11.32 the stewardship assessment to the purchase price of all architectural paint sold in the state.

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

12.1 (d) No retailer or distributor shall be found to be in violation of this subdivision if,
12.2 on the date the architectural paint was ordered from the producer or its agent, the producer
12.3 was listed as compliant on the agency's Web site according to subdivision 14.

12.4 Subd. 12. **Stewardship reports.** Beginning October 1, 2015, producers of
12.5 architectural paint sold in the state must individually or through a stewardship organization
12.6 submit an annual report to the agency describing the product stewardship program. At a
12.7 minimum, the report must contain:

12.8 (1) a description of the methods used to collect, transport, and process architectural
12.9 paint in all regions of the state;

12.10 (2) the weight of all architectural paint collected in all regions of the state and a
12.11 comparison to the performance goals and recycling rates established in the stewardship
12.12 plan;

12.13 (3) the amount of unwanted architectural paint collected in the state by method of
12.14 disposition, including reuse, recycling, and other methods of processing;

12.15 (4) samples of educational materials provided to consumers and an evaluation of the
12.16 effectiveness of the materials and the methods used to disseminate the materials; and

12.17 (5) an independent financial audit.

12.18 Subd. 13. **Sales information.** Sales information provided to the commissioner
12.19 under this section is classified as private or nonpublic data, as specified in section
12.20 115A.06, subdivision 13.

12.21 Subd. 14. **Agency responsibilities.** The agency shall provide, on its Web site, a
12.22 list of all compliant producers and brands participating in stewardship plans that the
12.23 agency has approved and a list of all producers and brands the agency has identified as
12.24 noncompliant with this section.

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

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

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

12.34 Subd. 16. **Administrative fee.** (a) The stewardship organization or individual
12.35 producer submitting a stewardship plan shall pay the agency an annual administrative fee.
12.36 The agency shall set the fee at an amount that, when paid by every stewardship organization

13.1 or individual producer that submits a stewardship plan, is adequate to cover the agency's
13.2 full costs of administering and enforcing this section. The agency may establish a variable
13.3 fee based on relevant factors, including, but not limited to, the portion of architectural
13.4 paint sold in the state by members of the organization compared to the total amount of
13.5 architectural paint sold in the state by all organizations submitting a stewardship plan.

13.6 (b) The total amount of annual fees collected under this subdivision must not exceed
13.7 the amount necessary to recover costs incurred by the agency in connection with the
13.8 administration and enforcement of this section.

13.9 (c) The agency shall identify the direct program development or regulatory costs
13.10 it incurs under this section before stewardship plans are submitted and shall establish a
13.11 fee in an amount adequate to cover those costs, which shall be paid by a stewardship
13.12 organization or individual producer that submits a stewardship plan. The commissioner
13.13 must make the proposed fee available for public review and comment for at least 30 days.

13.14 (d) A stewardship organization or individual producer subject to this section must
13.15 pay the agency's administrative fee under paragraph (a) on or before July 1, 2014, and
13.16 annually thereafter and the agency's onetime development fee under paragraph (c) on or
13.17 before July 1 the year following submission of a stewardship plan. Each year after the
13.18 initial payment, the annual administrative fee may not exceed five percent of the aggregate
13.19 stewardship assessment collected for the preceding calendar year.

13.20 (e) The agency shall deposit the fees collected under this section into a product
13.21 stewardship account.

13.22 **Sec. 3. [115A.142] PRIMARY BATTERIES; PRODUCT STEWARDSHIP**
13.23 **PROGRAM; STEWARDSHIP PLAN.**

13.24 Subdivision 1. **Definitions.** For purposes of this section, the following terms have
13.25 the meaning given:

13.26 (1) "brand" means a name, symbol, word, or mark that identifies a primary battery,
13.27 rather than its components, and attributes the battery to the owner or licensee of the brand
13.28 as the producer;

13.29 (2) "discarded battery" means a primary battery that is no longer used for its
13.30 manufactured purpose;

13.31 (3) "primary battery" means a battery weighing two kilograms or less that is not
13.32 designed to be electrically recharged, including, but not limited to, alkaline manganese,
13.33 carbon zinc, lithium, silver oxide, and zinc air batteries. Nonremovable batteries and
13.34 medical devices as defined in the federal Food, Drug, and Cosmetic Act, United States
13.35 Code, title 21, section 321(h), as amended, are exempted from this definition.

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

14.2 (i) has legal ownership of the brand, brand name, or cobrand of a primary battery
14.3 sold in the state;

14.4 (ii) imports a primary battery branded by a producer that meets subclause (i) when
14.5 the producer has no physical presence in the United States;

14.6 (iii) if subclauses (i) and (ii) do not apply, makes an unbranded primary battery
14.7 that is sold in the state; or

14.8 (iv) sells a primary battery at wholesale or retail, does not have legal ownership of
14.9 the brand, and elects to fulfill the responsibilities of the producer for the battery;

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

14.13 (6) "retailer" means any person who offers primary batteries for sale at retail in
14.14 the state;

14.15 (7) "sale" or "sell" means transfer of title of a primary battery for consideration,
14.16 including a remote sale conducted through a sales outlet, catalog, Web site, or similar
14.17 electronic means. Sale or sell includes a lease through which a primary battery is provided
14.18 to a consumer by a producer, wholesaler, or retailer;

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

14.22 (9) "stewardship plan" means a detailed plan describing the manner in which a
14.23 product stewardship program under subdivision 2 will be implemented.

14.24 Subd. 2. **Product stewardship program.** For each primary battery sold in the
14.25 state, producers must, individually or through a stewardship organization, implement
14.26 and finance a statewide product stewardship program that manages primary batteries by
14.27 reducing primary battery waste generation, promoting primary battery recycling, and
14.28 providing for negotiation and execution of agreements to collect, transport, and process
14.29 primary batteries for end-of-life recycling.

14.30 Subd. 3. **Requirement for sale.** (a) On and after December 1, 2014, or three months
14.31 after program plan approval, whichever is sooner, no producer, wholesaler, or retailer may
14.32 sell or offer for sale in the state a primary battery unless the battery's producer participates
14.33 in an approved stewardship plan, either individually or through a stewardship organization.

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

15.1 Subd. 4. **Requirement to submit plan.** (a) On or before August 1, 2014, and before
15.2 offering a primary battery for sale in the state, a producer must submit a stewardship
15.3 plan to the agency and receive approval of the plan or must submit documentation to the
15.4 agency that demonstrates the producer has entered into an agreement with a stewardship
15.5 organization to be an active participant in an approved product stewardship program as
15.6 described in subdivision 2. A stewardship plan must include all elements required under
15.7 subdivision 5.

15.8 (b) An amendment to the plan, if determined necessary by the commissioner, must
15.9 be submitted every five years.

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

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

15.15 (1) certification that the product stewardship program will accept discarded primary
15.16 batteries regardless of which producer produced the batteries and their individual
15.17 components;

15.18 (2) contact information for the individual and the entity submitting the plan, a list of
15.19 all producers participating in the product stewardship program, and the brands covered by
15.20 the product stewardship program;

15.21 (3) a description of the methods by which the discarded primary batteries will
15.22 be collected in all areas in the state without relying on end-of-life fees, including an
15.23 explanation of how the collection system will be convenient and adequate to serve the
15.24 needs of small businesses and residents in both urban and rural areas on an ongoing basis;

15.25 (4) a description of how the adequacy of the collection program will be monitored
15.26 and maintained;

15.27 (5) the names and locations of collectors, transporters, and recyclers that will
15.28 manage discarded batteries;

15.29 (6) a description of how the discarded batteries and the batteries' components will
15.30 be safely and securely transported, tracked, and handled from collection through final
15.31 recycling and processing;

15.32 (7) a description of the method that will be used to recycle the discarded primary
15.33 batteries to ensure that the batteries' components, to the extent feasible, are transformed or
15.34 remanufactured into finished batteries for use;

16.1 (8) a description of the promotion and outreach activities that will be used to
 16.2 encourage participation in the collection and recycling programs and how the activities'
 16.3 effectiveness will be evaluated and the program modified, if necessary;

16.4 (9) evidence of adequate insurance and financial assurance that may be required for
 16.5 collection, handling, and disposal operations;

16.6 (10) five-year performance goals, including an estimate of the percentage of
 16.7 discarded batteries that will be collected, reused, and recycled during each of the first five
 16.8 years of the stewardship plan. The performance goals must include a specific escalating
 16.9 goal for the amount of discarded batteries that will be collected and recycled during each
 16.10 year of the plan. The performance goals must be based on:

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

16.12 (ii) the estimated amount of primary batteries disposed of annually;

16.13 (iii) the weight of primary batteries that is expected to be available for collection
 16.14 annually;

16.15 (iv) actual collection data from other existing stewardship programs; and

16.16 (v) the market share of the producers participating in the plan.

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

16.18 (11) a discussion of the status of end markets for discarded batteries and what, if any,
 16.19 additional end markets are needed to improve the functioning of the program.

16.20 Subd. 6. **Consultation required.** Each stewardship organization or individual
 16.21 producer submitting a stewardship plan must consult with stakeholders including retailers,
 16.22 collectors, recyclers, local government, and customers during the development of the plan.

16.23 Subd. 7. **Agency review and approval.** (a) Within 90 days after receipt of a proposed
 16.24 stewardship plan, the agency shall determine whether the plan complies with subdivision
 16.25 5. If the agency approves a plan, the agency shall notify the applicant of the plan approval
 16.26 in writing. If the agency rejects a plan, the agency shall notify the applicant in writing of
 16.27 the reasons for rejecting the plan. An applicant whose plan is rejected by the agency must
 16.28 submit a revised plan to the agency within 60 days after receiving notice of rejection.

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

16.31 Subd. 8. **Plan availability.** All draft and approved stewardship plans shall be
 16.32 placed on the agency's Web site for at least 30 days and made available at the agency's
 16.33 headquarters for public review and comment.

16.34 Subd. 9. **Conduct authorized.** A producer or stewardship organization that
 16.35 organizes collection, transport, and processing of primary batteries under this section
 16.36 is immune from liability for the conduct under state laws relating to antitrust, restraint

17.1 of trade, unfair trade practices, and other regulation of trade or commerce only to the
17.2 extent that the conduct is necessary to plan and implement the producer's or organization's
17.3 chosen organized collection or recycling system.

17.4 Subd. 10. **Responsibility of retailers.** (a) On and after December 1, 2014, or three
17.5 months after program plan approval, whichever is sooner, no primary battery may be sold
17.6 in the state unless the battery's producer is participating in an approved stewardship plan.

17.7 (b) Any retailer may participate, on a voluntary basis, as a designated collection
17.8 point pursuant to a product stewardship program under this section and in accordance
17.9 with applicable law.

17.10 (c) No retailer or distributor shall be found to be in violation of this subdivision if,
17.11 on the date the primary battery was ordered from the producer or its agent, the producer
17.12 was listed as compliant on the agency's Web site according to subdivision 13.

17.13 Subd. 11. **Stewardship reports.** Beginning March 1, 2016, producers of primary
17.14 batteries sold in the state must individually or through a stewardship organization
17.15 submit an annual report to the agency describing the product stewardship program. At a
17.16 minimum, the report must contain:

17.17 (1) a description of the methods used to collect, transport, and process primary
17.18 batteries in all regions of the state;

17.19 (2) the weight of all primary batteries collected in all regions of the state and a
17.20 comparison to the performance goals and recycling rates established in the stewardship
17.21 plan;

17.22 (3) the amount of discarded primary batteries collected in the state by method of
17.23 disposition, including recycling, and other methods of processing;

17.24 (4) samples of educational materials provided to consumers and an evaluation of the
17.25 effectiveness of the materials and the methods used to disseminate the materials; and

17.26 (5) an independent financial audit of the stewardship organization.

17.27 Subd. 12. **Data classification.** Trade secret information, as defined under section
17.28 13.37, submitted to the agency under this section is nonpublic data under section 13.37,
17.29 subdivision 2.

17.30 Subd. 13. **Sales information.** Sales information provided to the commissioner
17.31 under this section is classified as private or nonpublic data, as specified in section
17.32 115A.06, subdivision 13.

17.33 Subd. 14. **Local government responsibilities.** (a) A city, county, or other public
17.34 agency may choose to participate voluntarily in a product stewardship program.

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

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

18.8 Subd. 15. **Administrative fee.** (a) The stewardship organization or individual
18.9 producer submitting a stewardship plan shall pay the agency an annual administrative fee.
18.10 The agency shall set the fee at an amount that, when paid by every stewardship organization
18.11 or individual producer that submits a stewardship plan, is adequate to cover the agency's
18.12 full costs of administering and enforcing this section. The agency may establish a variable
18.13 fee based on relevant factors, including, but not limited to, the portion of primary batteries
18.14 sold in the state by members of the organization compared to the total amount of primary
18.15 batteries sold in the state by all organizations submitting a stewardship plan.

18.16 (b) The total amount of annual fees collected under this section must not exceed
18.17 the amount necessary to recover costs incurred by the agency in connection with the
18.18 administration and enforcement of this section.

18.19 (c) The agency shall identify the direct program development or regulatory costs
18.20 it incurs under this section before stewardship plans are submitted and shall establish a
18.21 fee in an amount adequate to cover those costs, which shall be paid by a stewardship
18.22 organization or individual producer that submits a stewardship plan. The commissioner
18.23 must make the proposed fee available for public review and comment for at least 30 days.

18.24 (d) A stewardship organization or individual producer subject to this section must
18.25 pay the agency's administrative fee under paragraph (a) on or before July 1, 2015, and
18.26 annually thereafter and the agency's onetime development fee under paragraph (c) on or
18.27 before July 1 the year following submission of a stewardship plan.

18.28 (e) The agency shall deposit the fees collected under this section into a product
18.29 stewardship account.

18.30 Subd. 16. **Exemption; medical device.** The requirements of this section do not
18.31 apply to a medical device as defined in the Food, Drug, and Cosmetic Act, United States
18.32 Code, title 21, section 321, paragraph (h).

18.33 Subd. 17. **Private enforcement.** (a) The operator of a statewide product stewardship
18.34 program established under subdivision 2 that incurs costs exceeding \$5,000 to collect,
18.35 handle, recycle, or properly dispose of discarded primary batteries sold or offered for sale
18.36 in Minnesota by a producer who does not implement its own program or participate in a

19.1 program implemented by a stewardship organization, may bring a civil action or actions
19.2 to recover costs and fees as specified in paragraph (b) from each nonimplementing or
19.3 nonparticipating producer who can reasonably be identified from a brand or marking on a
19.4 used consumer battery or from other information.

19.5 (b) An action under paragraph (a) may be brought against one or more primary
19.6 battery producers, provided that no such action may be commenced:

19.7 (1) prior to 60 days after written notice of the operator's intention to file suit has been
19.8 provided to the agency and the defendant or defendants; or

19.9 (2) if the agency has commenced enforcement actions under subdivision 10 and is
19.10 diligently pursuing such actions.

19.11 (c) In any action under paragraph (b), the plaintiff operator may recover from
19.12 a defendant nonimplementing or nonparticipating primary battery producer costs the
19.13 plaintiff incurred to collect, handle, recycle, or properly dispose of primary batteries
19.14 reasonably identified as having originated from the defendant, plus the plaintiff's attorney
19.15 fees and litigation costs.

19.16 **Sec. 4. [115A.1425] REPORT TO LEGISLATURE AND GOVERNOR.**

19.17 As part of the report required under section 115A.121, the commissioner of the
19.18 Pollution Control Agency shall provide a report to the governor and the legislature on the
19.19 implementation of sections 115A.141, 115A.1415, and 115A.142.

19.20 **Sec. 5. EFFECTIVE DATE.**

19.21 Sections 1 to 4 are effective July 1, 2013.