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# State of Minnesota

## HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

# H. F. No. 3370

05/05/2014 Authored by Hortman and McNamara

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; establishing product stewardship program for primary  
1.3 batteries; providing civil penalties; amending Minnesota Statutes 2013  
1.4 Supplement, section 115A.142; proposing coding for new law in Minnesota  
1.5 Statutes, chapter 115A.

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

1.7 Section 1. **[115A.1416] PRIMARY BATTERIES; PRODUCT STEWARDSHIP**  
1.8 **PROGRAM; STEWARDSHIP PLAN.**

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

1.11 (1) "brand" means a name, symbol, word, or traceable mark that identifies:

1.12 (i) a primary battery and attributes the primary battery to the owner or licensee  
1.13 of the brand as the producer; or

1.14 (ii) a primary battery-containing product and attributes the primary battery to the  
1.15 owner or licensee of the primary battery-containing product as the producer;

1.16 (2) "calendar year" means the period commencing January 1 and ending December  
1.17 31 of the same calendar year;

1.18 (3) "collection rate" means a percentage by weight that each producer or stewardship  
1.19 organization collects by an established date. The collection rate is calculated by weight  
1.20 based on the percentage of primary batteries, including primary batteries taken from  
1.21 primary battery-containing products, that are collected during a calendar year, as compared  
1.22 to the average weight of primary batteries, including those in primary battery-containing  
1.23 products, that were estimated to have been sold in the state by participating producers  
1.24 during the three previous calendar years. Estimates of primary batteries sold in the state  
1.25 may be based on a reasonable pro rata calculation based on national sales;

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

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

(6) "easily removable" means readily detachable by a person without the use of tools or with the use of common household tools;

(7) "primary battery" means a nonrechargeable battery weighing two kilograms or less, including alkaline, carbon-zinc, lithium metal, and other batteries typically generated as waste;

(8) "primary battery-containing product" means a primary battery contained in or packed with products such as cameras, watches, calculators, flashlights, lanterns, portable radios, toys, and clocks. Primary battery-containing product does not include:

(i) a primary battery that is sold in a covered electronic device, as defined in section 115A.1310, subdivision 7;

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

(iii) a primary battery that is sold or used in an implanted medical device, as defined in the federal Food, Drug, and Cosmetic Act, United States Code, title 21, section 321, paragraph (h);

(9) "primary battery stewardship organization" or "stewardship organization" means an organization appointed by one or more producers to act as an agent on behalf of a producer or producers to design, submit, implement, and administer a primary battery stewardship plan under this section;

(10) "primary battery stewardship plan" or "plan" means a plan submitted to the agency under subdivision 3 by an individual producer or a primary battery stewardship organization;

(11) "producer" means one of the following with regard to a primary battery or a primary battery-containing product that is sold, offered for sale, or distributed in the state:

(i) a person that manufactures a primary battery or a primary battery-containing product and that sells, offers for sale, or distributes the primary battery or the primary battery-containing product in the state under the person's own name or brand;

(ii) if item (i) does not apply, a person that owns or licenses a trademark or brand under which a primary battery or primary battery-containing product is sold, offered for sale, or distributed in the state, whether or not the trademark is registered; or

(iii) if item (i) or (ii) does not apply, a person that imports a primary battery or a primary battery-containing product into the state for sale or distribution.

Producer does not include a person that manufactures, sells, offers for sale, or imports a primary battery-containing product in the state if the person affirms that the person only uses primary batteries supplied by a producer participating in an approved primary battery stewardship program and reports to the agency the estimated number of primary batteries in the person's primary battery-containing products estimated to be sold in the state. Estimates of primary batteries contained in primary battery-containing products sold in the state may be based on a reasonable pro rata calculation of national sales of the primary battery-containing products;

(12) "program" or "stewardship program" means a system for the collection, transportation, recycling, and disposal of primary batteries implemented under an approved primary battery stewardship plan;

(13) "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;

(14) "retailer" means a person who offers a primary battery or a primary battery-containing product for sale to any consumer or business at retail in the state; and

(15) "sale" or "sell" means transfer of title of a primary battery or primary battery-containing product for consideration, including a remote sale conducted through a sales outlet, catalog, Web site, or similar electronic means. Sale or sell includes a lease through which a primary battery or primary battery-containing product is provided to a consumer by a producer, manufacturer, assembler, wholesaler, or retailer.

**Subd. 2. Sale of primary battery or primary battery-containing product.** (a) Beginning January 1, 2016, except as provided under paragraphs (b) and (c), a producer of a primary battery or primary battery-containing product must not sell, offer for sale, or deliver to a retailer for subsequent sale a primary battery or primary battery-containing product unless:

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

(2) the producer or stewardship organization has paid the fee under subdivision 10; and

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

(b) A producer who, after January 1, 2015, seeks to sell, offer for sale, or offer for promotional purposes in the state a primary battery or primary battery-containing product not previously sold in the state must notify the agency before selling or offering a product not covered by a stewardship plan in the state. The agency shall list a producer who supplies notice under this paragraph as a new producer on the agency's Web site. A producer that supplies notice under this paragraph has 90 days to join an existing primary battery stewardship organization or submit a primary battery stewardship plan for approval to the agency.

(c) A producer who annually sells, offers for sale, distributes, or imports into the state primary batteries or primary battery-containing products with a total retail value of less than \$500 is exempt from this section.

Subd. 3. **Primary battery stewardship plan.** (a) On or before April 1, 2015, a producer selling, offering for sale, or offering for promotional purposes a primary battery or primary battery-containing product in the state must individually or as part of a primary battery stewardship organization submit a primary battery stewardship plan to the agency for review.

(b) Each primary battery stewardship plan must, at a minimum:

(1) provide a list of all participating producers, contact information for each of the participating producers, and the brands of primary batteries covered by the plan;

(2) provide for free collection of primary batteries from consumers. A producer shall not refuse the collection of a primary battery based on the brand or manufacturer of the primary battery;

(3) allow all retailers that sell primary batteries or primary battery-containing products covered under the plan and all municipalities to opt to be a collection facility;

(4) provide no fewer than two collection facilities in each county in the state;

(5) provide for acceptance from a consumer of up to 20 primary batteries per visit. A collection facility may agree to accept more than 20 batteries per visit from a consumer;

(6) 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;

(7) list all key participants in the primary battery collection chain, including:

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

(ii) the name and contact information of the transporters or contractors collecting primary batteries from collection facilities; and

5.1 (iii) the name, address, and contact information of the recycling facilities that  
5.2 process the collected primary batteries;

5.3 (8) include an education and outreach program. The education and outreach  
5.4 program may include media advertising, retail displays, articles in trade journals and other  
5.5 publications, and other public educational efforts. The education and outreach program  
5.6 shall describe the outreach procedures that will be used to provide notice of the program  
5.7 to businesses, municipalities, retailers, wholesalers, and haulers. At a minimum, the  
5.8 education and outreach program shall notify the public:

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

5.10 (ii) the location of collection points and how to access the collection program; and

5.11 (9) include provisions for implementing the program in conjunction with those  
5.12 retailers and municipalities acting as collection facilities under a program. Implementation  
5.13 of the program must be at no cost to retailers or municipalities acting as collection  
5.14 facilities under a program. A producer or a primary battery stewardship organization  
5.15 must provide retailers and municipalities acting as collection facilities with products or  
5.16 equipment for setting up a collection point and for providing for the pickup of collected  
5.17 primary batteries, including arranging for the management of those primary batteries.

5.18 Subd. 4. **Annual report; plan audit.** (a) On or before April 1, 2017, and annually  
5.19 thereafter, a producer or a primary battery stewardship organization must submit a report  
5.20 to the agency that:

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

5.23 (2) provides the collection rate achieved in the prior calendar year;

5.24 (3) specifies the collection facilities that failed in the previous calendar year to  
5.25 collect a minimum of 100 pounds by weight of primary batteries and whether these  
5.26 collection facilities will be eliminated from the producer's or primary battery stewardship  
5.27 organization's plan;

5.28 (4) lists the locations for all collection points set up by the producers covered by the  
5.29 plan and contact information for each location;

5.30 (5) gives examples and a description of educational materials used to increase  
5.31 collection;

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

5.33 (7) describes any material change to the primary battery stewardship plan; and

5.34 (8) provides the cost of implementation of the program, including the costs of  
5.35 collection, recycling, education, and outreach.

(b) Once every five years, a producer or stewardship organization must hire an independent third party to audit the plan and plan operation. The auditor must examine the effectiveness of the program in collecting and recycling primary batteries. The independent auditor must examine the cost-effectiveness of the program and compare it to that of collection programs for primary batteries in other jurisdictions. The independent auditor must make recommendations to the agency on ways to increase program efficacy and cost-effectiveness.

**Subd. 5. Primary battery stewardship organization; requirements; registration.**

(a) A producer may meet the requirements of this section by participating in a primary battery stewardship organization that undertakes the producer's responsibilities under subdivisions 2 to 4.

(b) To qualify as a stewardship organization under this section, an organization must:

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

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

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

(c) Beginning January 1, 2015, and annually thereafter, a stewardship organization must register with the agency on a form provided by the agency. The registration form must include:

(1) a list of the producers participating in the stewardship organization;

(2) a list of the brands of primary batteries and primary battery-containing products of each producer participating in the stewardship organization;

(3) the name, address, and contact information of a person responsible for ensuring producers' compliance with this section;

(4) a description of how the stewardship organization meets the requirements of paragraph (b), including any reasonable requirements for participation in the stewardship organization; and

(5) the name, address, and contact information of a person for a nonmember manufacturer to contact regarding how to participate in the stewardship organization to satisfy the requirements of this section.

(d) A renewal of a registration without changes may be accomplished by notifying the agency on a form provided by the agency.

(e) Producers of battery-containing products that choose to fulfill the requirements of this section by participation in a stewardship organization under paragraph (a) must notify

each product stewardship organization operating an approved program that the primary batteries contained within or packaged with the person's products are covered by a primary battery producer participating in a stewardship program and must provide the name of the products, the identity of the person's primary battery supplier, the brand, weight, chemistry, and estimated number of batteries contained in or packaged with the products sold in the state, and any other details the primary battery stewardship organization may reasonably require. A primary battery stewardship organization in which the primary battery supplier is participating shall, as part of the list submitted under subdivision 3, paragraph (b), include the producer of the primary battery-containing product as a participant in its program, subject to any limitations or exceptions as may be indicated by the information submitted by the primary battery-containing product producer.

Subd. 6. **Agency responsibilities; approval of plans.** (a) Within 90 days after receipt of a proposed stewardship plan, the agency shall determine whether the plan complies with subdivision 3. If the agency approves a plan, the agency shall notify the applicant of the plan approval in writing. If the agency rejects a plan, the agency shall notify the applicant in writing of the reasons for rejecting the plan. An applicant whose plan is rejected by the agency shall submit a revised plan to the agency within 45 days of receiving notice of rejection.

(b) Any changes to a proposed stewardship plan must be approved by the agency in writing. The agency, at the commissioner's discretion or at the request of a producer, may require a producer or a primary battery stewardship organization to amend an approved plan.

(c) The agency shall post all proposed and approved primary battery stewardship plans on the agency's Web site, subject to the confidentiality provisions of subdivision 8.

(d) The agency 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) The agency shall accept, review, and approve or deny primary battery stewardship organization registrations submitted under subdivision 5.

(f) The agency shall maintain a Web site that includes the names of producers with approved plans or participation in approved plans. The Web site shall list all of an approved producer's brands covered by the stewardship plan filed with the agency. The agency shall update information on the Web site within ten days of receipt of notice of any change to the listed information.

(g) A primary battery stewardship plan approved by the agency under this subdivision has a term not to exceed five years, provided that the producer remains in compliance with the requirements of this section and the terms of the approved plan.

8.1 Subd. 7. **Retailer obligations.** (a) Except as provided under paragraph (b),  
8.2 beginning January 1, 2016, no retailer shall sell or offer for sale a primary battery or  
8.3 primary battery-containing product unless the retailer has reviewed the agency's Web site  
8.4 required in subdivision 6, paragraph (f), to determine that the producer of the primary  
8.5 battery or primary battery-containing product is implementing an approved collection plan  
8.6 or is a member of a stewardship organization.

8.7 (b) A retailer is not responsible for an unlawful sale of a primary battery or primary  
8.8 battery-containing product under this subdivision if:

8.9 (1) the retailer purchased the primary battery or primary battery-containing product  
8.10 before January 1, 2016, and sells the battery or product on or before January 1, 2017; or

8.11 (2) the producer's stewardship plan expired or was revoked, and the retailer took  
8.12 possession of the in-store inventory of primary batteries or primary battery-containing  
8.13 products before the expiration or revocation of the producer's stewardship plan.

8.14 Subd. 8. **Confidentiality of submitted data.** (a) Reports and data submitted under  
8.15 this section are available for public inspection and copying, except that information  
8.16 deemed trade secret information as defined under section 13.37 is not available for public  
8.17 inspection and copying. The agency may publish confidential information in a summary  
8.18 or aggregated form that does not directly or indirectly identify individual producers,  
8.19 distributors, or retailers.

8.20 (b) The agency may require, as part of a report submitted under this section, that the  
8.21 producer or stewardship organization submit a report that does not contain trade secret  
8.22 information and is available for public inspection and review.

8.23 (c) The total weight of batteries collected under an approved primary battery  
8.24 stewardship plan is not confidential business information under the Uniform Trade Secrets  
8.25 Act, or trade secret information as defined under section 13.37.

8.26 Subd. 9. **Antitrust; conduct authorized.** (a) A producer, group of producers, or  
8.27 stewardship organization implementing or participating in an approved stewardship plan  
8.28 under this section for the collection, transport, processing, and end-of-life management  
8.29 of primary batteries are individually or jointly immune from liability for the conduct  
8.30 under state laws relating to antitrust, restraint of trade, unfair trade practices, and other  
8.31 regulation of trade or commerce, to the extent that the conduct is reasonably necessary  
8.32 to plan, implement, and comply with the producer's, group of producers', or stewardship  
8.33 organization's chosen system for managing discarded primary batteries. This subdivision  
8.34 applies to conduct of a retailer or wholesaler participating in a producer's or stewardship  
8.35 organization's approved plan when the conduct is necessary to plan and implement the



9.1 producer's or stewardship organization's organized collection or recycling system for  
9.2 discarded primary batteries.

9.3 (b) Paragraph (a) does not apply to an agreement among producers, groups of  
9.4 producers, retailers, wholesalers, or stewardship organizations affecting the price of  
9.5 primary batteries or primary battery-containing products or any agreement restricting  
9.6 the geographic area in which, or customers to whom, primary batteries or primary  
9.7 battery-containing products shall be sold.

9.8 Subd. 10. **Administrative fee.** (a) A producer or stewardship organization shall  
9.9 pay a fee of \$15,000 annually for operation under a stewardship plan approved by the  
9.10 agency under subdivision 6.

9.11 (b) The fees collected under paragraph (a) shall be deposited in the environmental  
9.12 fund.

9.13 Subd. 11. **Private right of action.** (a) A producer or a primary battery stewardship  
9.14 organization implementing an approved plan in compliance with this section may bring a  
9.15 civil action against another producer or stewardship organization for damages when:

9.16 (1) the plaintiff producer or stewardship organization incurs more than \$3,000 in  
9.17 actual direct costs collecting, handling, recycling, or properly disposing of primary  
9.18 batteries sold or offered for sale in the state by another producer; and

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

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

9.23 (ii) does not operate an approved primary battery stewardship program in the state.

9.24 (b) As used in this subdivision, "damages" means:

9.25 (1) the actual, direct costs a plaintiff producer incurs in collecting, handling,  
9.26 recycling, or properly disposing of primary batteries reasonably identified as having  
9.27 originated from a noncompliant producer;

9.28 (2) exemplary damages not exceeding three times the costs incurred under clause  
9.29 (1); and

9.30 (3) the prevailing plaintiff producer's attorney fees and costs of bringing the action.

9.31 Subd. 12. **Preemption.** It is the intent of the legislature that this section fully  
9.32 occupies and preempts the entire field of stewardship of primary batteries. Cities, towns,  
9.33 counties, or other municipalities in the state may not adopt ordinances that regulate  
9.34 disposal of primary batteries or require reporting by producers of primary batteries or  
9.35 primary battery stewardship programs. Any such local laws and ordinances shall not be

10.1 enacted and are preempted and repealed, regardless of the nature of the code or charter or  
10.2 home rule status of the city, town, county, or municipality.

10.3 Subd. 13. **Penalty.** A producer who violates this section is subject to a civil penalty  
10.4 not to exceed \$1,000 per day for each day of noncompliance.

10.5 Sec. 2. Minnesota Statutes 2013 Supplement, section 115A.142, is amended to read:

10.6 **115A.142 REPORT TO LEGISLATURE AND GOVERNOR.**

10.7 As part of the report required under section 115A.121, the commissioner of the  
10.8 Pollution Control Agency shall provide a report to the governor and the legislature on the  
10.9 implementation of ~~section~~ sections 115A.1415 and 115A.1416.

10.10 Sec. 3. **EFFECTIVE DATE.**

10.11 Sections 1 and 2 are effective August 1, 2014.