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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. **3046**

02/11/2020

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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 solid waste; requiring product stewardship program for solar photovoltaic
- 1.3 modules; providing for fee on retail sales of solar photovoltaic modules; requiring
- 1.4 a report; appropriating money; amending Minnesota Statutes 2018, sections
- 1.5 13.7411, subdivision 4; 115A.142; proposing coding for new law in Minnesota
- 1.6 Statutes, chapter 115A.
- 1.7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
- 1.8 Section 1. Minnesota Statutes 2018, section 13.7411, subdivision 4, is amended to read:
- 1.9 Subd. 4. **Waste management.** (a) **Product stewardship ~~program~~ programs.** Trade
- 1.10 secret and sales data information submitted to the Pollution Control Agency under the
- 1.11 product stewardship ~~program~~ programs is classified under ~~section~~ sections 115A.1415 and
- 1.12 115A.1416.
- 1.13 (b) **Transfer station data.** Data received by a county or district from a transfer station
- 1.14 under section 115A.84, subdivision 5, are classified under that section.
- 1.15 (c) **Solid waste records.** Records of solid waste facilities received, inspected, or copied
- 1.16 by a county pursuant to section 115A.882 are classified pursuant to section 115A.882,
- 1.17 subdivision 3.
- 1.18 (d) **Customer lists.** Customer lists provided to counties or cities by solid waste collectors
- 1.19 are classified under section 115A.93, subdivision 5.

2.1 Sec. 2. [115A.1416] SOLAR PHOTOVOLTAIC MODULES; PRODUCT
2.2 STEWARDSHIP PROGRAM; STEWARDSHIP PLAN.

2.3 Subdivision 1. Definitions. (a) For purposes of this section, the following terms have
2.4 the meanings given.

2.5 (b) "Brand" means a name, symbol, word, or mark that:

2.6 (1) identifies a solar photovoltaic module, rather than the solar photovoltaic module's
2.7 components; and

2.8 (2) attributes the solar photovoltaic module to the owner or licensee of the brand as the
2.9 producer.

2.10 (c) "Discarded solar photovoltaic module" means a solar photovoltaic module that is no
2.11 longer used for its manufactured purpose.

2.12 (d) "Producer" means a person that:

2.13 (1) has legal ownership of the brand, brand name, or cobrand of solar photovoltaic
2.14 modules sold in the state;

2.15 (2) imports solar photovoltaic modules branded by a producer that meets the criteria in
2.16 clause (1) when the producer has no physical presence in the United States;

2.17 (3) if clauses (1) and (2) do not apply, makes unbranded solar photovoltaic modules that
2.18 are sold in the state; or

2.19 (4) sells solar photovoltaic modules at wholesale or retail, does not have legal ownership
2.20 of the brand, and elects to fulfill the producer's responsibilities for the solar photovoltaic
2.21 modules by certifying that election in writing to the commissioner.

2.22 (e) "Recycling" means the process of:

2.23 (1) collecting and preparing recyclable materials; and

2.24 (2) using recyclable materials in manufacturing processes that do not destroy the
2.25 recyclable materials in a manner that precludes subsequent use.

2.26 (f) "Retailer" means any person who offers solar photovoltaic modules for sale at retail
2.27 in the state.

2.28 (g) "Sale" or "sell" means transfer of title to solar photovoltaic modules for consideration,
2.29 including a remote sale conducted through a sales outlet, catalog, website, or similar
2.30 electronic means. Sale or sell includes a lease through which solar photovoltaic modules
2.31 are provided to a consumer by a producer, wholesaler, or retailer.

(h) "Solar photovoltaic module" has the meaning given in section 116C.7791, subdivision 1.

(i) "Stewardship assessment" means the amount added to the purchase price of solar photovoltaic modules sold in the state that is necessary to cover the cost of collecting, transporting, and processing discarded solar photovoltaic modules by the producer or stewardship organization pursuant to a product stewardship program.

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

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

Subd. 2. Product stewardship program. Producers must, individually or through a stewardship organization, implement and finance a statewide product stewardship program that manages solar photovoltaic modules sold in the state that have been discarded by reducing waste generation, promoting recycling, and negotiating and executing agreements to collect, transport, and process the solar photovoltaic modules for end-of-life recycling.

Subd. 3. Requirement for sale. (a) On and after July 1, 2021, or three months after program plan approval, whichever is sooner, a producer, wholesaler, or retailer is prohibited from selling or offering for sale in the state solar photovoltaic modules unless the solar photovoltaic modules' producer participates in an approved stewardship plan, either individually or through a stewardship organization.

(b) Each producer must:

(1) operate a product stewardship program approved by the agency; or

(2) enter into an agreement with a stewardship organization to operate, on the producer's behalf, a product stewardship program approved by the agency.

Subd. 4. Requirement to submit plan. (a) On or before March 1, 2021, and before offering solar photovoltaic modules for sale in the state, a producer must:

(1) submit to the agency and receive approval of a stewardship plan; or

(2) submit to the agency documentation that demonstrates the producer has entered into an agreement with a stewardship organization to be an active participant in an approved product stewardship program described under subdivision 2.

4.1 A stewardship plan under clause (1) or (2) must include all elements required under
4.2 subdivision 5.

4.3 (b) The entity responsible for each stewardship plan must, if required by the
4.4 commissioner, submit an amendment to the plan every five years.

4.5 (c) The entity responsible for each stewardship plan must notify the agency within 30
4.6 days of any significant changes or modifications to the plan or its implementation and must
4.7 submit a revised written plan to the agency for review and approval within 30 days of the
4.8 notification.

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

4.10 (1) certification that the product stewardship program will accept all discarded solar
4.11 photovoltaic modules, regardless of which producer produced the solar photovoltaic modules
4.12 and the individual components of the solar photovoltaic module;

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

4.16 (3) a description of the methods proposed to collect the discarded solar photovoltaic
4.17 modules in all areas in the state without relying on end-of-life fees, including:

4.18 (i) an explanation of how the collection system is designed to be convenient and adequate
4.19 to serve the needs of small businesses and residents in both urban and rural areas on an
4.20 ongoing basis; and

4.21 (ii) a discussion of opportunities to integrate the existing household hazardous waste
4.22 infrastructure when selecting collection sites;

4.23 (4) a description of the techniques to be used to monitor and maintain the adequacy of
4.24 the collection program;

4.25 (5) the names and locations of collectors, transporters, and recyclers that will manage
4.26 discarded solar photovoltaic modules;

4.27 (6) a description of how discarded solar photovoltaic modules and components of solar
4.28 photovoltaic modules are to be safely and securely transported, tracked, and handled from
4.29 collection through final recycling and processing;

4.30 (7) a description of the method to be used to dismantle and recycle discarded solar
4.31 photovoltaic modules to ensure that, to the extent feasible, the components of the solar
4.32 photovoltaic modules are transformed or remanufactured into finished products for use;

5.1 (8) a description of the promotion and outreach activities to be used to encourage
5.2 participation in the collection and recycling program, including measures to evaluate the
5.3 activities' effectiveness and whether the program requires modification;

5.4 (9) the proposed uniform stewardship assessment for all solar photovoltaic modules sold
5.5 in the state, which must be reviewed by an independent auditor to ensure that the assessment
5.6 does not exceed the costs of the product stewardship program. The independent auditor
5.7 must recommend a stewardship assessment amount, which must be approved by the agency;

5.8 (10) evidence of adequate insurance and financial assurance, if required for collection,
5.9 handling, recycling, and disposal operations;

5.10 (11) five-year performance goals, including an estimate of both the percentage and
5.11 amount of discarded solar photovoltaic modules to be collected and recycled during each
5.12 of the first five years of the stewardship plan. The performance goals must state the
5.13 methodology used to determine the goals and must be based on:

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

5.15 (ii) the estimated number and weight of solar photovoltaic modules disposed of annually;
5.16 and

5.17 (iii) actual collection data from other existing stewardship programs; and

5.18 (12) a discussion regarding the status of end markets for collected solar photovoltaic
5.19 modules and what, if any, additional end markets are needed to improve the functioning of
5.20 the program.

5.21 Subd. 6. **Consultation required.** When developing a stewardship plan, each stewardship
5.22 organization or individual producer must consult with stakeholders, including retailers, solar
5.23 photovoltaic module installers, owners, collectors, recyclers, and local government.

5.24 Subd. 7. **Agency review and approval.** (a) Within 90 days after receiving a proposed
5.25 stewardship plan, the agency must determine whether the plan complies with subdivision
5.26 5. If the agency approves a plan, the agency must notify the applicant in writing of the plan's
5.27 approval and implementation date, which must be no later than 90 days after written notice
5.28 of the plan's approval. If the agency rejects a plan, the agency must notify the applicant in
5.29 writing of the reasons for rejecting the plan. An applicant whose plan is rejected by the
5.30 agency must submit a revised plan to the agency within 60 days after receiving notice of
5.31 rejection.

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

6.1 Subd. 8. **Plan availability.** All draft and approved stewardship plans must be placed on
6.2 the agency's website and made available at the agency's headquarters for public review and
6.3 comment.

6.4 Subd. 9. **Conduct authorized.** A producer or stewardship organization that organizes
6.5 collection, transport, and processing of solar photovoltaic modules under this section is
6.6 immune from liability for conduct under state laws relating to antitrust, restraint of trade,
6.7 unfair trade practices, and other regulation of trade or commerce. Liability immunity under
6.8 this section is limited to conduct necessary to plan and implement the producer's or
6.9 organization's chosen organized collection or recycling system.

6.10 Subd. 10. **Producer responsibilities.** (a) On and after the implementation date of a
6.11 product stewardship program under this section, a producer of solar photovoltaic modules
6.12 must add the stewardship assessment, as approved by the agency, to the cost of solar
6.13 photovoltaic modules sold to retailers and distributors in the state.

6.14 (b) A solar photovoltaic module producer or the stewardship organization must provide
6.15 consumers with educational materials regarding the stewardship assessment and product
6.16 stewardship program. The materials must include but are not limited to information regarding
6.17 available end-of-life management options for solar photovoltaic modules offered through
6.18 the product stewardship program and information notifying consumers that a charge for
6.19 operating the product stewardship program is included in the purchase price of solar
6.20 photovoltaic modules sold in the state.

6.21 (c) A producer or stewardship organization must conduct and document due diligence
6.22 assessments of collectors and recyclers it contracts with, including an assessment of items
6.23 specified under subdivision 11. A producer or stewardship organization must maintain
6.24 documentation for three years that all solar photovoltaic modules recycled, partially recycled,
6.25 or sent to downstream recycling operations comply with subdivision 11.

6.26 (d) A producer or stewardship organization must provide the agency with contact
6.27 information for a person who can be contacted regarding the producer's or stewardship
6.28 organization's activities under this section.

6.29 Subd. 11. **Recycler responsibilities.** Beginning September 1, 2021, and each September
6.30 1 thereafter, a recycler must certify to the agency that solar photovoltaic module recycling
6.31 facilities, including all downstream recycling operations:

6.32 (1) comply with all applicable health, environmental, safety, and financial responsibility
6.33 regulations;

7.1 (2) are licensed by all applicable governmental authorities;

7.2 (3) use no prison labor to recycle solar photovoltaic modules; and

7.3 (4) possess liability insurance of not less than \$1,000,000 for environmental releases,
7.4 accidents, and other emergencies.

7.5 Subd. 12. **Retailer responsibilities.** (a) On and after July 1, 2021, or three months after
7.6 program plan approval, whichever is sooner, a producer is prohibited from selling solar
7.7 photovoltaic modules in the state unless the solar photovoltaic modules' producer is
7.8 participating in an approved stewardship plan.

7.9 (b) On and after the implementation date of a product stewardship program according
7.10 to this section, a retailer or distributor, as applicable, is prohibited from offering solar
7.11 photovoltaic modules for sale in this state unless the full amount of the stewardship
7.12 assessment added to the cost of solar photovoltaic modules by producers under subdivision
7.13 10 is included in the purchase price of the solar photovoltaic modules.

7.14 (c) Any retailer may participate, on a voluntary basis, as a designated collection point
7.15 pursuant to a product stewardship program under this section, subject to applicable law.

7.16 (d) A retailer or distributor does not violate this subdivision if, on the date a solar
7.17 photovoltaic module sold by the retailer or distributor was ordered from the producer or its
7.18 agent, the producer was listed as compliant on the agency's website under subdivision 15.

7.19 Subd. 13. **Stewardship reports.** Beginning October 1, 2021, and each October 1
7.20 thereafter, producers of solar photovoltaic modules sold in the state must, individually or
7.21 through a stewardship organization, submit a report to the agency describing the product
7.22 stewardship program. At a minimum, the report must contain:

7.23 (1) a description of the methods used to collect, transport, and process solar photovoltaic
7.24 modules in all regions of the state;

7.25 (2) the number and weight of all solar photovoltaic modules collected in all regions of
7.26 the state and a comparison to the performance goals and recycling rates contained in the
7.27 stewardship plan;

7.28 (3) samples of educational materials provided to consumers, an evaluation of the
7.29 effectiveness of the materials, and an evaluation of the methods used to disseminate the
7.30 materials; and

7.31 (4) an independent financial audit of the stewardship program.

8.1 Subd. 14. **Data classification.** Trade secret information, as defined under section 13.37,
8.2 and sales information submitted to the agency under this section are nonpublic or private
8.3 data under section 13.37.

8.4 Subd. 15. **Agency responsibilities.** The agency must provide on its website:

8.5 (1) a list of all compliant producers and brands participating in approved stewardship
8.6 plans; and

8.7 (2) a list of all producers and brands the agency has identified as noncompliant with this
8.8 section.

8.9 Subd. 16. **Local government responsibilities.** (a) A city, county, or other public agency
8.10 may choose to participate voluntarily in a product stewardship program.

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

8.14 Subd. 17. **Administrative fee.** (a) The stewardship organization or individual producer
8.15 submitting a stewardship plan must pay an annual administrative fee to the commissioner.
8.16 The agency may establish a variable fee based on relevant factors, including but not limited
8.17 to the portion of solar photovoltaic modules sold in the state by members of the organization
8.18 compared to the total amount of solar photovoltaic modules sold in the state by all
8.19 organizations submitting a stewardship plan.

8.20 (b) By June 30, 2021, and by June 30 annually thereafter, the agency must identify the
8.21 costs it incurs under this section. The agency must set the fee at an amount that, when paid
8.22 by every stewardship organization or individual producer that submits a stewardship plan,
8.23 is adequate to reimburse the agency's full costs of administering this section. The total annual
8.24 fees collected under this subdivision must not exceed the amount necessary to reimburse
8.25 costs incurred by the agency to administer this section.

8.26 (c) A stewardship organization or individual producer subject to this subdivision must
8.27 pay the agency's administrative fee under paragraph (a) on or before July 1, 2021, and
8.28 annually thereafter. Each year after the initial payment, the annual administrative fee may
8.29 not exceed five percent of the aggregate stewardship assessment added to the cost of all
8.30 solar photovoltaic modules sold by producers in the state for the preceding calendar year.

8.31 (d) All fees received under this section must be deposited to the state treasury and credited
8.32 to a product stewardship account in the special revenue fund. For fiscal years 2021 and

9.1 2022, the amount collected under this section is annually appropriated to the agency to
9.2 implement and enforce this section.

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

9.4 **115A.142 REPORT TO LEGISLATURE AND GOVERNOR.**

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

9.8 Sec. 4. **[115A.9657] SOLAR PHOTOVOLTAIC MODULE PROHIBITION.**

9.9 A person is prohibited from placing a solar photovoltaic module in mixed municipal
9.10 solid waste.

9.11 **EFFECTIVE DATE.** This section is effective the day following final enactment.