

SENATE
STATE OF MINNESOTA
EIGHTY-EIGHTH SESSION

S.F. No. 2698

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DATE	D-PG	OFFICIAL STATUS
03/17/2014	6278	Introduction and first reading Referred to Environment and Energy

A bill for an act

1.1 relating to solid waste; requiring product stewardship program for solar
 1.2 photovoltaic modules; providing for fee on retail sales of solar photovoltaic
 1.3 modules; prohibiting placement of solar photovoltaic modules in mixed
 1.4 municipal solid waste; requiring a report; appropriating money; amending
 1.5 Minnesota Statutes 2013 Supplement, sections 13.7411, subdivision 4; 115A.142;
 1.6 proposing coding for new law in Minnesota Statutes, chapter 115A.
 1.7

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

1.9 Section 1. Minnesota Statutes 2013 Supplement, section 13.7411, subdivision 4,
 1.10 is amended to read:

1.11 Subd. 4. **Waste management.** (a) **Product stewardship program programs.**

1.12 Trade secret and sales data information submitted to the Pollution Control Agency under
 1.13 the product stewardship program programs is classified under ~~section~~ sections 115A.1415
 1.14 and 115A.1416.

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

1.17 (c) **Solid waste records.** Records of solid waste facilities received, inspected,
 1.18 or copied by a county pursuant to section 115A.882 are classified pursuant to section
 1.19 115A.882, subdivision 3.

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

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

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

2.3 (1) "brand" means a name, symbol, word, or mark that identifies solar photovoltaic
2.4 modules, rather than its components, and attributes the solar photovoltaic modules to the
2.5 owner or licensee of the brand as the producer;

2.6 (2) "discarded solar photovoltaic modules" means solar photovoltaic modules that
2.7 are no longer used for their manufactured purpose;

2.8 (3) "producer" means a person that:

2.9 (i) has legal ownership of the brand, brand name, or cobrand of solar photovoltaic
2.10 modules sold in the state;

2.11 (ii) imports solar photovoltaic modules branded by a producer that meets item (i)
2.12 when the producer has no physical presence in the United States;

2.13 (iii) if items (i) and (ii) do not apply, makes unbranded solar photovoltaic modules
2.14 that are sold in the state; or

2.15 (iv) sells solar photovoltaic modules at wholesale or retail, does not have legal
2.16 ownership of the brand, and elects to fulfill the responsibilities of the producer for the solar
2.17 photovoltaic modules by certifying that election in writing to the commissioner;

2.18 (4) "recycling" means the process of collecting and preparing recyclable materials
2.19 and using them in manufacturing processes that do not cause the destruction of recyclable
2.20 materials in a manner that precludes further use;

2.21 (5) "retailer" means any person who offers solar photovoltaic modules for sale
2.22 at retail in the state;

2.23 (6) "sale" or "sell" means transfer of title of solar photovoltaic modules for
2.24 consideration, including a remote sale conducted through a sales outlet, catalog, Web site,
2.25 or similar electronic means. Sale or sell includes a lease through which solar photovoltaic
2.26 modules are provided to a consumer by a producer, wholesaler, or retailer;

2.27 (7) "solar photovoltaic module" has the meaning given in section 116C.7791,
2.28 subdivision 1;

2.29 (8) "stewardship assessment" means the amount added to the purchase price of solar
2.30 photovoltaic modules sold in the state that is necessary to cover the cost of collecting,
2.31 transporting, and processing postconsumer solar photovoltaic modules by the producer or
2.32 stewardship organization pursuant to a product stewardship program;

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

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

3.3 Subd. 2. **Product stewardship program.** For solar photovoltaic modules sold in
3.4 the state, producers must, individually or through a stewardship organization, implement
3.5 and finance a statewide product stewardship program that manages the solar photovoltaic
3.6 modules by reducing their waste generation, promoting their recycling, and providing
3.7 for negotiation and execution of agreements to collect, transport, and process the solar
3.8 photovoltaic modules for end-of-life recycling.

3.9 Subd. 3. **Requirement for sale.** (a) On and after July 1, 2015, or three months after
3.10 program plan approval, whichever is sooner, no producer, wholesaler, or retailer may sell
3.11 or offer for sale in the state solar photovoltaic modules unless the solar photovoltaic
3.12 modules' producer participates in an approved stewardship plan, either individually or
3.13 through a stewardship organization.

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

3.17 Subd. 4. **Requirement to submit plan.** (a) On or before March 1, 2015, and
3.18 before offering solar photovoltaic modules for sale in the state, a producer must submit
3.19 a stewardship plan to the agency and receive approval of the plan or must submit
3.20 documentation to the agency that demonstrates the producer has entered into an agreement
3.21 with a stewardship organization to be an active participant in an approved product
3.22 stewardship program as described in subdivision 2. A stewardship plan must include
3.23 all elements required under subdivision 5.

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

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

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

3.31 (1) certification that the product stewardship program will accept all discarded
3.32 solar photovoltaic modules regardless of which producer produced the solar photovoltaic
3.33 modules and their individual components;

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

4.1 (3) a description of the methods by which the discarded solar photovoltaic modules
4.2 will be collected in all areas in the state without relying on end-of-life fees, including an
4.3 explanation of how the collection system will be convenient and adequate to serve the
4.4 needs of small businesses and residents in both urban and rural areas on an ongoing basis
4.5 and a discussion of how the existing household hazardous waste infrastructure will be
4.6 considered when selecting collection sites;

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

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

4.11 (6) a description of how discarded solar photovoltaic modules and their components
4.12 will be safely and securely transported, tracked, and handled from collection through
4.13 final recycling and processing;

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

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

4.20 (9) the proposed stewardship assessment. The producer or stewardship organization
4.21 shall propose a uniform stewardship assessment for all solar photovoltaic modules sold
4.22 in the state. The proposed stewardship assessment shall be reviewed by an independent
4.23 auditor to ensure that the assessment does not exceed the costs of the product stewardship
4.24 program, and the independent auditor shall recommend an amount for the stewardship
4.25 assessment. The agency must approve the stewardship assessment;

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

4.28 (11) five-year performance goals, including an estimate of the percentage of
4.29 discarded solar photovoltaic modules that will be collected and recycled during each of
4.30 the first five years of the stewardship plan. The performance goals must include a specific
4.31 goal for the amount of discarded solar photovoltaic modules that will be collected and
4.32 recycled during each year of the plan. The performance goals must be based on:

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

4.34 (ii) the estimated number and weight of solar photovoltaic modules disposed of
4.35 annually; and

5.1 (iii) actual collection data from other existing stewardship programs. The
5.2 stewardship plan must state the methodology used to determine these goals; and

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

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

5.9 Subd. 7. **Agency review and approval.** (a) Within 90 days after receipt of a
5.10 proposed stewardship plan, the agency shall determine whether the plan complies with
5.11 subdivision 5. If the agency approves a plan, the agency shall notify the applicant in
5.12 writing of the plan's approval and implementation date, which must be no later than 90
5.13 days after written notice of the plan's approval. If the agency rejects a plan, the agency
5.14 shall notify the applicant in writing of the reasons for rejecting the plan. An applicant
5.15 whose plan is rejected by the agency must submit a revised plan to the agency within
5.16 60 days after receiving notice of rejection.

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

5.19 Subd. 8. **Plan availability.** All draft and approved stewardship plans shall be
5.20 placed on the agency's Web site and made available at the agency's headquarters for
5.21 public review and comment.

5.22 Subd. 9. **Conduct authorized.** A producer or stewardship organization that
5.23 organizes collection, transport, and processing of solar photovoltaic modules under this
5.24 section is immune from liability for the conduct under state laws relating to antitrust,
5.25 restraint of trade, unfair trade practices, and other regulation of trade or commerce only
5.26 to the extent that the conduct is necessary to plan and implement the producer's or
5.27 organization's chosen organized collection or recycling system.

5.28 Subd. 10. **Responsibility of producers.** (a) On and after the date of implementation
5.29 of a product stewardship program according to this section, a producer of solar photovoltaic
5.30 modules must add the stewardship assessment, as approved by the agency, to the cost of
5.31 solar photovoltaic modules sold to retailers and distributors in the state by the producer.

5.32 (b) Producers of solar photovoltaic modules or the stewardship organization shall
5.33 provide consumers with educational materials regarding the stewardship assessment
5.34 and product stewardship program. The materials must include, but are not limited to,
5.35 information regarding available end-of-life management options for solar photovoltaic
5.36 modules offered through the product stewardship program and information that notifies

6.1 consumers that a charge for the operation of the product stewardship program is included
6.2 in the purchase price of solar photovoltaic modules sold in the state.

6.3 (c) A producer or stewardship organization must conduct and document due
6.4 diligence assessments of collectors and recyclers it contracts with, including an assessment
6.5 of items specified under subdivision 11. A producer or stewardship organization is
6.6 responsible for maintaining, for a period of three years, documentation that all solar
6.7 photovoltaic modules recycled, partially recycled, or sent to downstream recycling
6.8 operations comply with subdivision 11.

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

6.12 Subd. 11. **Responsibility of recyclers.** By September 1 each year, a recycler must
6.13 certify to the agency that facilities that recycle solar photovoltaic modules, including all
6.14 downstream recycling operations:

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

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

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

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

6.21 Subd. 12. **Responsibility of retailers.** (a) On and after July 1, 2015, or three
6.22 months after program plan approval, whichever is sooner, no solar photovoltaic modules
6.23 may be sold in the state unless the solar photovoltaic modules' producer is participating
6.24 in an approved stewardship plan.

6.25 (b) On and after the implementation date of a product stewardship program according
6.26 to this section, no retailer or distributor, as applicable, may offer solar photovoltaic
6.27 modules for sale in this state unless the full amount of the stewardship assessment added
6.28 to the cost of solar photovoltaic modules by producers under subdivision 10 is included
6.29 in the purchase price of the solar photovoltaic modules.

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

6.33 (d) No retailer or distributor shall be found to be in violation of this subdivision if,
6.34 on the date a solar photovoltaic module sold by the retailer or distributor was ordered
6.35 from the producer or its agent, the producer was listed as compliant on the agency's Web
6.36 site according to subdivision 15.

7.1 Subd. 13. **Stewardship reports.** Beginning October 1, 2015, and each October 1
7.2 thereafter, producers of solar photovoltaic modules sold in the state must individually or
7.3 through a stewardship organization submit a report to the agency describing the product
7.4 stewardship program. At a minimum, the report must contain:

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

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

7.10 (3) samples of educational materials provided to consumers and an evaluation of the
7.11 effectiveness of the materials and the methods used to disseminate the materials; and

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

7.13 Subd. 14. **Data classification.** Trade secret information, as defined under section
7.14 13.37, and sales information submitted to the agency under this section are nonpublic or
7.15 private data under section 13.37.

7.16 Subd. 15. **Agency responsibilities.** The agency shall provide on its Web site a list of
7.17 all compliant producers and brands participating in approved stewardship plans and a list
7.18 of all producers and brands the agency has identified as noncompliant with this section.

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

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

7.24 Subd. 17. **Administrative fee.** (a) The stewardship organization or individual
7.25 producer submitting a stewardship plan shall pay an annual administrative fee to the
7.26 commissioner. The agency may establish a variable fee based on relevant factors,
7.27 including, but not limited to, the portion of solar photovoltaic modules sold in the state by
7.28 members of the organization compared to the total amount of solar photovoltaic modules
7.29 sold in the state by all organizations submitting a stewardship plan.

7.30 (b) By June 30, 2015, and by June 30 annually thereafter, the agency shall identify
7.31 the costs it incurs under this section. The agency shall set the fee at an amount that, when
7.32 paid by every stewardship organization or individual producer that submits a stewardship
7.33 plan, is adequate to reimburse the agency's full costs of administering this section. The
7.34 total amount of annual fees collected under this subdivision must not exceed the amount
7.35 necessary to reimburse costs incurred by the agency to administer this section.

8.1 (c) A stewardship organization or individual producer subject to this subdivision
8.2 must pay the agency's administrative fee under paragraph (a) on or before July 1, 2015, and
8.3 annually thereafter. Each year after the initial payment, the annual administrative fee may
8.4 not exceed five percent of the aggregate stewardship assessment added to the cost of all
8.5 solar photovoltaic modules sold by producers in the state for the preceding calendar year.

8.6 (d) All fees received under this section shall be deposited to the state treasury and
8.7 credited to a product stewardship account in the special revenue fund. For fiscal years
8.8 2015 and 2016, the amount collected under this section is annually appropriated to the
8.9 agency to implement and enforce this section.

8.10 Sec. 3. Minnesota Statutes 2013 Supplement, section 115A.142, is amended to read:

8.11 **115A.142 REPORT TO LEGISLATURE AND GOVERNOR.**

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

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

8.16 A person may not place a solar photovoltaic module in mixed municipal solid waste.

8.17 **EFFECTIVE DATE.** This section is effective July 1, 2015.