

4522--A

2015-2016 Regular Sessions

I N S E N A T E

March 26, 2015

Introduced by Sen. AVELLA -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- recommitted to the Committee on Environmental Conservation in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law, in relation to establishing a product stewardship program for primary batteries

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Article 27 of the environmental conservation law is amended
2 by adding a new title 16 to read as follows:

3 TITLE 16

4 PRODUCT STEWARDSHIP

5 FOR PRIMARY BATTERIES

6 SECTION 27-1601. DEFINITIONS

7 27-1603. SALE OF PRIMARY BATTERY OR PRIMARY BATTERY-CONTAINING
8 PRODUCT; STEWARDSHIP ORGANIZATION REGISTRATION.

9 27-1605. PRIMARY BATTERY STEWARDSHIP PLAN.

10 27-1607. ANNUAL REPORT; PLAN AUDIT.

11 27-1609. PRIMARY BATTERY STEWARDSHIP ORGANIZATION; REQUIREMENTS;
12 REGISTRATION.

13 27-1611. AGENCY RESPONSIBILITIES; APPROVAL OF PLANS.

14 27-1613. RETAILER OBLIGATIONS.

15 27-1615. CONFIDENTIALITY OF SUBMITTED DATA.

16 27-1617. ANTITRUST; CONDUCT AUTHORIZED.

17 27-1619. ADMINISTRATIVE FEE.

18 27-1621. PRIVATE RIGHT OF ACTION.

19 27-1623. REIMBURSEMENT OF RECHARGEABLE BATTERY STEWARDS.

20 27-1625. PENALTIES.

21 27-1627. RULEMAKING; PROCEDURE.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD04566-03-6

S 27-1601. DEFINITIONS.

WHEN USED IN THIS TITLE:

1. "DEPARTMENT" MEANS THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION.

2. "BRAND" MEANS A NAME, SYMBOL, WORD, OR TRACEABLE MARK THAT IDENTIFIES:

A. A PRIMARY BATTERY AND ATTRIBUTES THE PRIMARY BATTERY TO THE OWNER OR LICENSEE OF THE BRAND AS THE PRODUCER; OR

B. A PRIMARY BATTERY-CONTAINING PRODUCT AND ATTRIBUTES THE PRIMARY BATTERY TO THE OWNER OR LICENSEE OF THE PRIMARY BATTERY-CONTAINING PRODUCT AS THE PRODUCER.

3. "CALENDAR YEAR" MEANS THE PERIOD COMMENCING JANUARY FIRST AND ENDING DECEMBER THIRTY-FIRST OF THE SAME CALENDAR YEAR.

4. "COLLECTION RATE" MEANS A PERCENTAGE BY WEIGHT THAT EACH PRODUCER OR STEWARDSHIP ORGANIZATION COLLECTS BY AN ESTABLISHED DATE. THE COLLECTION RATE SHALL BE CALCULATED BY WEIGHT BASED ON THE PERCENTAGE OF PRIMARY BATTERIES, INCLUDING PRIMARY BATTERIES TAKEN FROM PRIMARY BATTERY-CONTAINING PRODUCTS, THAT ARE COLLECTED DURING A CALENDAR YEAR, AS COMPARED TO THE AVERAGE WEIGHT OF PRIMARY BATTERIES, INCLUDING THOSE IN PRIMARY BATTERY-CONTAINING PRODUCTS, THAT WERE ESTIMATED TO HAVE BEEN SOLD IN THE STATE BY PARTICIPATING PRODUCERS DURING THE THREE PREVIOUS CALENDAR YEARS. ESTIMATES OF PRIMARY BATTERIES SOLD IN THE STATE MAY BE BASED ON A REASONABLE PRO RATA CALCULATION BASED ON NATIONAL SALES.

5. "CONSUMER" MEANS ANY PERSON WHO PRESENTS OR DELIVERS ANY NUMBER OF PRIMARY BATTERIES TO A COLLECTION FACILITY THAT IS INCLUDED IN AN APPROVED PRIMARY BATTERY STEWARDSHIP PLAN.

6. "DISCARDED PRIMARY BATTERY" MEANS A PRIMARY BATTERY THAT IS NO LONGER USED FOR ITS MANUFACTURED PURPOSE.

7. "EASILY REMOVABLE" MEANS READILY DETACHABLE BY A PERSON WITHOUT THE USE OF TOOLS OR WITH THE USE OF COMMON HOUSEHOLD TOOLS.

8. "PRIMARY BATTERY" MEANS A NONRECHARGEABLE BATTERY WEIGHING TWO KILOGRAMS OR LESS, INCLUDING ALKALINE, CARBON-ZINC, LITHIUM METAL, AND OTHER BATTERIES TYPICALLY GENERATED AS WASTE.

9. "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" SHALL NOT MEAN ANY OF THE FOLLOWING:

A. A PRIMARY BATTERY THAT IS SOLD IN A COVERED ELECTRONIC DEVICE;

B. 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

C. A PRIMARY BATTERY THAT IS SOLD OR USED IN AN IMPLANTED MEDICAL DEVICE.

10. "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 TITLE.

11. "PRIMARY BATTERY STEWARDSHIP PLAN" OR "PLAN" MEANS A PLAN SUBMITTED TO THE COMMISSIONER PURSUANT TO SECTION 27-1605 OF THIS TITLE BY AN INDIVIDUAL PRODUCER OR A PRIMARY BATTERY STEWARDSHIP ORGANIZATION.

12. A. "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 WHO MANUFACTURES A PRIMARY BATTERY, OR A PRIMARY BATTERY-CONTAINING PRODUCT, AND WHO SELLS, OFFERS FOR SALE, OR DISTRIBUTES

1 THAT PRIMARY BATTERY, OR THAT PRIMARY BATTERY-CONTAINING PRODUCT, IN THE
2 STATE UNDER THE PERSON'S OWN NAME OR BRAND;

3 (II) IF SUBPARAGRAPH (I) OF THIS PARAGRAPH DOES NOT APPLY, A PERSON
4 WHO OWNS OR LICENSES A TRADEMARK OR BRAND UNDER WHICH A PRIMARY BATTERY
5 OR PRIMARY BATTERY-CONTAINING PRODUCT IS SOLD, OFFERED FOR SALE, OR
6 DISTRIBUTED IN THE STATE, WHETHER OR NOT THE TRADEMARK IS REGISTERED; OR

7 (III) IF SUBPARAGRAPHS (I) AND (II) OF THIS PARAGRAPH DO NOT APPLY, A
8 PERSON WHO IMPORTS A PRIMARY BATTERY OR A PRIMARY BATTERY-CONTAINING
9 PRODUCT INTO THE STATE FOR SALE OR DISTRIBUTION.

10 B. "PRODUCER" SHALL NOT MEAN A PERSON WHO MANUFACTURES, SELLS, OFFERS
11 FOR SALE OR IMPORTS A PRIMARY BATTERY-CONTAINING PRODUCT IN THE STATE IF
12 THAT PERSON:

13 (I) AFFIRMS THAT IT ONLY USES PRIMARY BATTERIES SUPPLIED BY A PRODUCER
14 PARTICIPATING IN AN APPROVED BATTERY STEWARDSHIP PROGRAM; AND

15 (II) REPORTS TO THE COMMISSIONER THE ESTIMATED NUMBER OF PRIMARY
16 BATTERIES IN THE PERSON'S PRIMARY BATTERY-CONTAINING PRODUCTS ESTIMATED
17 TO BE SOLD IN THE STATE. ESTIMATES OF PRIMARY BATTERIES CONTAINED IN
18 PRIMARY BATTERY-CONTAINING PRODUCTS SOLD IN THE STATE MAY BE BASED ON A
19 REASONABLE PRO RATA CALCULATION OF NATIONAL SALES OF THE PRIMARY BATTER-
20 Y-CONTAINING PRODUCTS.

21 13. "PROGRAM" OR "STEWARDSHIP PROGRAM" MEANS THE SYSTEM FOR THE
22 COLLECTION, TRANSPORTATION, RECYCLING, AND DISPOSAL OF PRIMARY BATTERIES
23 IMPLEMENTED PURSUANT TO AN APPROVED PRIMARY BATTERY STEWARDSHIP PLAN.

24 14. A. "RECHARGEABLE BATTERY" MEANS:

25 (I) ONE OR MORE VOLTAIC OR GALVANIC CELLS, ELECTRICALLY CONNECTED TO
26 PRODUCE ELECTRIC ENERGY AND DESIGNED TO BE RECHARGED AND WEIGHING LESS
27 THAN ELEVEN POUNDS; OR

28 (II) A BATTERY PACK DESIGNED TO BE RECHARGED THAT WEIGHS LESS THAN
29 ELEVEN POUNDS AND THAT IS DESIGNED TO PROVIDE LESS THAN FORTY VOLTS
30 DIRECT CURRENT.

31 B. "RECHARGEABLE BATTERY" SHALL NOT MEAN:

32 (I) A BATTERY THAT IS NOT EASILY REMOVABLE OR IS NOT INTENDED OR
33 DESIGNED TO BE REMOVED FROM THE COVERED PRODUCT, OTHER THAN BY THE
34 MANUFACTURER;

35 (II) A BATTERY THAT CONTAINS ELECTROLYTE AS A FREE LIQUID; OR

36 (III) A BATTERY OR BATTERY PACK THAT EMPLOYS LEAD-ACID TECHNOLOGY,
37 UNLESS THE BATTERY OR BATTERY PACK:

38 (1) IS SEALED;

39 (2) CONTAINS NO LIQUID ELECTROLYTE; AND

40 (3) IS INTENDED BY ITS MANUFACTURER TO POWER A HANDHELD DEVICE OR TO
41 PROVIDE UNINTERRUPTED BACKUP ELECTRICAL POWER PROTECTION FOR STATIONARY
42 CONSUMER PRODUCTS OR STATIONARY OFFICE EQUIPMENT.

43 15. "RECHARGEABLE BATTERY STEWARD" MEANS A PERSON WHO:

44 A. MANUFACTURES A RECHARGEABLE BATTERY OR A RECHARGEABLE PRODUCT THAT
45 IS SOLD, OFFERED FOR SALE, OR DISTRIBUTED IN THE STATE UNDER ITS OWN
46 BRAND NAMES;

47 B. OWNS OR LICENSES A TRADEMARK OR BRAND UNDER WHICH A RECHARGEABLE
48 BATTERY OR RECHARGEABLE PRODUCT IS SOLD, OFFERED FOR SALE, OR DISTRIB-
49 UTED IN THE STATE, WHETHER OR NOT THE TRADEMARK IS REGISTERED; OR

50 C. IF PARAGRAPHS A AND B OF THIS SUBDIVISION DO NOT APPLY, IMPORTS A
51 RECHARGEABLE BATTERY OR RECHARGEABLE PRODUCT INTO THE STATE FOR SALE OR
52 DISTRIBUTION.

53 16. "RECHARGEABLE PRODUCT" MEANS A PRODUCT THAT CONTAINS OR IS PACK-
54 AGED WITH A RECHARGEABLE BATTERY AT THE TIME THE PRODUCT IS SOLD,
55 OFFERED FOR SALE, OR DISTRIBUTED IN THE STATE. "RECHARGEABLE PRODUCT"
56 SHALL NOT MEAN:

1 A. A PRODUCT FROM WHICH A RECHARGEABLE BATTERY IS NOT EASILY REMOVABLE
2 OR IS NOT INTENDED OR DESIGNED TO BE REMOVED FROM THE PRODUCT, OTHER
3 THAN BY THE MANUFACTURER; OR

4 B. AN IMPLANTED MEDICAL DEVICE, AS THAT TERM IS DEFINED IN THE FEDERAL
5 FOOD, DRUG, AND COSMETIC ACT, 21 U.S.C. S 321(H), AS AMENDED.

6 17. "RECYCLING" MEANS ANY PROCESS BY WHICH DISCARDED PRODUCTS, COMPO-
7 NENTS, AND BY-PRODUCTS ARE TRANSFORMED INTO NEW USABLE OR MARKETABLE
8 MATERIALS IN A MANNER IN WHICH THE ORIGINAL PRODUCTS MAY LOSE THEIR
9 IDENTITY, BUT DOES NOT INCLUDE ENERGY RECOVERY OR ENERGY GENERATION BY
10 MEANS OF COMBUSTING DISCARDED PRODUCTS, COMPONENTS, AND BY-PRODUCTS WITH
11 OR WITHOUT OTHER WASTE PRODUCTS.

12 18. "RETAILER" MEANS A PERSON WHO OFFERS A PRIMARY BATTERY OR A PRIMA-
13 RY BATTERY-CONTAINING PRODUCT FOR SALE TO ANY CONSUMER OR BUSINESS AT
14 RETAIL IN THE STATE THROUGH ANY MEANS, INCLUDING REMOTE OFFERINGS SUCH
15 AS SALES OUTLETS, CATALOGUES, OR AN INTERNET WEBSITE.

16 S 27-1603. SALE OF PRIMARY BATTERY OR PRIMARY BATTERY-CONTAINING PROD-
17 UCT; STEWARDSHIP ORGANIZATION REGISTRATION.

18 1. SALE PROHIBITED. BEGINNING JANUARY FIRST, TWO THOUSAND EIGHTEEN,
19 EXCEPT AS SET FORTH UNDER THIS SUBDIVISION AND SUBDIVISION TWO OF THIS
20 SECTION, A PRODUCER OF A PRIMARY BATTERY OR PRIMARY BATTERY-CONTAINING
21 PRODUCT SHALL NOT SELL, OFFER FOR SALE, OR DELIVER TO A RETAILER FOR
22 SUBSEQUENT SALE A PRIMARY BATTERY OR PRIMARY BATTERY-CONTAINING PRODUCT
23 UNLESS ALL OF THE FOLLOWING HAS BEEN MET:

24 A. THE PRODUCER OR STEWARDSHIP ORGANIZATION IS REGISTERED UNDER AN
25 APPROVED AND IMPLEMENTED PRIMARY BATTERY STEWARDSHIP PLAN;

26 B. THE PRODUCER OR STEWARDSHIP ORGANIZATION HAS PAID THE FEE UNDER
27 SECTION 27-1619 OF THIS TITLE; AND

28 C. THE NAME OF THE PRODUCER AND THE PRODUCER'S BRAND ARE DESIGNATED ON
29 THE DEPARTMENT WEBSITE AS COVERED BY AN APPROVED PRIMARY BATTERY
30 STEWARDSHIP PLAN.

31 2. PRIMARY BATTERY STEWARDSHIP ORGANIZATION REGISTRATION REQUIREMENTS.
32 BEGINNING SEPTEMBER FIRST, TWO THOUSAND SEVENTEEN, AND ANNUALLY THERE-
33 AFTER, A STEWARDSHIP ORGANIZATION SHALL FILE A REGISTRATION FORM WITH
34 THE COMMISSIONER. THE COMMISSIONER SHALL PROVIDE THE REGISTRATION FORM
35 TO A STEWARDSHIP ORGANIZATION. THE REGISTRATION FORM SHALL INCLUDE:

36 A. A LIST OF THE PRODUCERS OF PRIMARY BATTERIES AND PRIMARY BATTERY
37 CONTAINING PRODUCTS PARTICIPATING IN THE STEWARDSHIP ORGANIZATION;

38 B. A LIST OF THE BRANDS OF PRIMARY BATTERIES AND PRIMARY BATTERY
39 CONTAINING PRODUCTS OF EACH PRODUCER PARTICIPATING IN THE STEWARDSHIP
40 ORGANIZATION; AND

41 C. THE NAME, ADDRESS, AND CONTACT INFORMATION OF A PERSON RESPONSIBLE
42 FOR ENSURING THE PRODUCER'S COMPLIANCE WITH THIS CHAPTER.

43 3. NEW PRODUCERS. A PRODUCER WHO, AFTER JANUARY FIRST, TWO THOUSAND
44 SEVENTEEN, SEEKS TO SELL, OFFER FOR SALE, OR OFFER FOR PROMOTIONAL
45 PURPOSES IN THE STATE A PRIMARY BATTERY OR PRIMARY BATTERY-CONTAINING
46 PRODUCT NOT PREVIOUSLY SOLD IN THE STATE, SHALL NOTIFY THE COMMISSIONER
47 PRIOR TO SELLING OR OFFERING A PRODUCT NOT COVERED BY A STEWARDSHIP PLAN
48 IN THE STATE. THE COMMISSIONER SHALL LIST A PRODUCER WHO SUPPLIES NOTICE
49 UNDER THIS SUBDIVISION AS A "NEW PRODUCER" ON THE DEPARTMENT'S WEBSITE.
50 A PRODUCER THAT SUPPLIES NOTICE UNDER THIS SUBDIVISION SHALL HAVE NINETY
51 DAYS TO EITHER JOIN AN EXISTING PRIMARY BATTERY STEWARDSHIP ORGANIZATION
52 OR TO SUBMIT A PRIMARY BATTERY STEWARDSHIP PLAN FOR APPROVAL TO THE
53 STATE.

54 4. EXEMPTION. A PRODUCER WHO ANNUALLY SELLS, OFFERS FOR SALE, DISTRIB-
55 UTES, OR IMPORTS IN THE STATE PRIMARY BATTERIES OR PRIMARY BATTERY-CON-

1 TAINING PRODUCTS WITH A TOTAL RETAIL VALUE OF LESS THAN FIVE HUNDRED
2 DOLLARS SHALL BE EXEMPT FROM THE REQUIREMENTS OF THIS TITLE.

3 S 27-1605. PRIMARY BATTERY STEWARDSHIP PLAN.

4 1. PRIMARY BATTERY STEWARDSHIP PLAN REQUIRED. ON OR BEFORE APRIL
5 FIRST, TWO THOUSAND SEVENTEEN, EACH PRODUCER SELLING, OFFERING FOR SALE,
6 OR OFFERING FOR PROMOTIONAL PURPOSES A PRIMARY BATTERY OR PRIMARY
7 BATTERY-CONTAINING PRODUCT IN THE STATE SHALL INDIVIDUALLY OR AS PART OF
8 A PRIMARY BATTERY STEWARDSHIP ORGANIZATION SUBMIT A PRIMARY BATTERY
9 STEWARDSHIP PLAN TO THE COMMISSIONER FOR REVIEW.

10 2. PRIMARY BATTERY STEWARDSHIP PLAN; MINIMUM REQUIREMENTS. EACH PRIMA-
11 RY BATTERY STEWARDSHIP PLAN SHALL INCLUDE, AT A MINIMUM, ALL OF THE
12 FOLLOWING ELEMENTS:

13 A. LIST OF PRODUCERS AND BRANDS. EACH PRIMARY BATTERY STEWARDSHIP PLAN
14 SHALL LIST:

15 (I) ALL PARTICIPATING PRODUCERS AND CONTACT INFORMATION FOR EACH OF
16 THE PARTICIPATING PRODUCERS; AND

17 (II) THE BRANDS OF PRIMARY BATTERIES COVERED BY THE PLAN.

18 B. FREE COLLECTION. EACH PRIMARY BATTERY STEWARDSHIP PLAN SHALL
19 PROVIDE FOR THE FREE COLLECTION OF PRIMARY BATTERIES FROM CONSUMERS. A
20 PRODUCER SHALL NOT REFUSE THE COLLECTION OF A PRIMARY BATTERY BASED ON
21 THE BRAND OR MANUFACTURER OF THE PRIMARY BATTERY.

22 C. COLLECTION; CONVENIENCE. EACH PRIMARY BATTERY STEWARDSHIP PLAN
23 SHALL:

24 (I) ALLOW ALL RETAILERS THAT SELL PRIMARY BATTERIES OR PRIMARY BATTER-
25 Y-CONTAINING PRODUCTS COVERED UNDER THE PLAN AND ALL MUNICIPALITIES TO
26 OPT TO BE A COLLECTION FACILITY;

27 (II) PROVIDE, AT A MINIMUM, NO FEWER THAN TWO COLLECTION FACILITIES IN
28 EACH COUNTY IN THE STATE; AND

29 (III) PROVIDE FOR THE ACCEPTANCE FROM A CONSUMER OF UP TO TWENTY
30 BATTERIES PER VISIT. A COLLECTION FACILITY MAY AGREE TO ACCEPT MORE THAN
31 TWENTY BATTERIES PER VISIT FROM A CONSUMER.

32 D. METHOD OF DISPOSITION. EACH PRIMARY BATTERY STEWARDSHIP PLAN SHALL
33 INCLUDE A DESCRIPTION OF THE METHOD THAT WILL BE USED TO RESPONSIBLY
34 MANAGE DISCARDED PRIMARY BATTERIES TO ENSURE THAT THE COMPONENTS OF THE
35 DISCARDED PRIMARY BATTERIES, TO THE EXTENT ECONOMICALLY AND TECHNICALLY
36 FEASIBLE, ARE RECYCLED.

37 E. ROLES AND RESPONSIBILITIES. A PRIMARY BATTERY STEWARDSHIP PLAN
38 SHALL LIST ALL KEY PARTICIPANTS IN THE PRIMARY BATTERY COLLECTION CHAIN,
39 INCLUDING:

40 (I) THE NUMBER AND NAME OF THE COLLECTION FACILITIES ACCEPTING PRIMARY
41 BATTERIES UNDER THE PLAN, INCLUDING THE ADDRESS AND CONTACT INFORMATION
42 FOR EACH FACILITY;

43 (II) THE NAME AND CONTACT INFORMATION OF A TRANSPORTER OR CONTRACTOR
44 COLLECTING PRIMARY BATTERIES FROM COLLECTION FACILITIES; AND

45 (III) THE NAME, ADDRESS, AND CONTACT INFORMATION OF THE RECYCLING
46 FACILITIES THAT PROCESS THE COLLECTED PRIMARY BATTERIES OR PRIMARY
47 BATTERY-CONTAINING PRODUCTS.

48 F. EDUCATION AND OUTREACH. A PRIMARY BATTERY STEWARDSHIP PLAN SHALL
49 INCLUDE AN EDUCATION AND OUTREACH PROGRAM. THE EDUCATION AND OUTREACH
50 PROGRAM MAY INCLUDE MEDIA ADVERTISING, RETAIL DISPLAYS, ARTICLES IN
51 TRADE AND OTHER JOURNALS AND PUBLICATIONS, AND OTHER PUBLIC EDUCATIONAL
52 EFFORTS. THE EDUCATION AND OUTREACH PROGRAM SHALL DESCRIBE THE OUTREACH
53 PROCEDURES THAT WILL BE USED TO PROVIDE NOTICE OF THE PROGRAM TO BUSI-
54 NESSES, MUNICIPALITIES, RETAILERS, WHOLESALERS, AND HAULERS. AT A MINI-
55 MUM, THE EDUCATION AND OUTREACH PROGRAM SHALL NOTIFY THE PUBLIC OF THE
56 FOLLOWING:

(I) THAT THERE IS A FREE COLLECTION PROGRAM FOR ALL PRIMARY BATTERIES;
AND

(II) THE LOCATION OF COLLECTION POINTS AND HOW TO ACCESS THE
COLLECTION PROGRAM.

G. REIMBURSEMENT.

(I) A PRIMARY BATTERY STEWARDSHIP PLAN SHALL INCLUDE A PROCEDURE UNDER WHICH THE PRODUCER OR STEWARDSHIP ORGANIZATION SUBMITTING THE PLAN SHALL REIMBURSE ANOTHER PRIMARY BATTERY PRODUCER OR STEWARDSHIP ORGANIZATION WITH AN APPROVED PLAN FOR THE ACTUAL DIRECT COSTS PER UNIT OF WEIGHT INCURRED IN COLLECTING THE BRANDS OR PRODUCTS OF THE PRODUCER SUBMITTING THE PLAN. DIRECT COSTS INCLUDE COSTS OF COLLECTION, TRANSPORT, RECYCLING AND OTHER ACTUAL ENVIRONMENTAL MANAGEMENT COSTS, PLUS AN ADDITIONAL NEGOTIATED AMOUNT NOT TO EXCEED TEN PERCENT TO REFLECT A REASONABLE CONTRIBUTION FOR INDIRECT COSTS, INCLUDING PERMITTING FEES, OVERHEAD, PERSONNEL COSTS, ADMINISTRATION, INSURANCE, LEGAL OR ACCOUNTING COSTS, EDUCATION AND OUTREACH, OR ANY OTHER COSTS.

(II) A PRODUCER OR PRIMARY BATTERY STEWARDSHIP ORGANIZATION THAT RECEIVES A REQUEST FOR REIMBURSEMENT MAY, PRIOR TO PAYMENT AND WITHIN THIRTY DAYS OF RECEIPT OF THE REQUEST FOR REIMBURSEMENT, REQUEST AN INDEPENDENT AUDIT OF SUBMITTED REIMBURSEMENT COSTS. IF THE INDEPENDENT AUDIT CONFIRMS THE REASONABLENESS OF THE REIMBURSEMENT REQUEST, THE PRODUCER OR PRIMARY BATTERY STEWARDSHIP ORGANIZATION REQUESTING THE AUDIT SHALL PAY THE COST OF THE AUDIT.

3. IMPLEMENTATION. A PRODUCER OR A PRIMARY BATTERY STEWARDSHIP ORGANIZATION SHALL INCLUDE PROVISIONS IN THE PLAN FOR THE IMPLEMENTATION OF THE PROGRAM IN CONJUNCTION WITH THOSE RETAILERS AND MUNICIPALITIES ACTING AS COLLECTION FACILITIES UNDER A PROGRAM. IMPLEMENTATION OF THE PROGRAM SHALL BE AT NO COST TO RETAILERS OR MUNICIPALITIES ACTING AS COLLECTION FACILITIES UNDER A PROGRAM. A PRODUCER OR A PRIMARY BATTERY STEWARDSHIP ORGANIZATION SHALL PROVIDE RETAILERS AND MUNICIPALITIES ACTING AS COLLECTION FACILITIES PRODUCTS OR EQUIPMENT FOR SETTING UP A COLLECTION POINT AND FOR PROVIDING FOR THE PICKUP OF COLLECTED PRIMARY BATTERIES, INCLUDING ARRANGING FOR THE MANAGEMENT OF THOSE PRIMARY BATTERIES.

S 27-1607. ANNUAL REPORT; PLAN AUDIT.

1. ANNUAL REPORT. ON OR BEFORE APRIL FIRST, TWO THOUSAND NINETEEN, AND ANNUALLY THEREAFTER, A PRODUCER OR A PRIMARY BATTERY STEWARDSHIP ORGANIZATION SHALL SUBMIT A REPORT TO THE COMMISSIONER THAT CONTAINS THE FOLLOWING:

A. THE WEIGHT OF PRIMARY BATTERIES COLLECTED BY THE PRODUCER OR THE STEWARDSHIP ORGANIZATION IN THE PRIOR CALENDAR YEAR;

B. THE COLLECTION RATE ACHIEVED IN THE PRIOR CALENDAR YEAR;

C. SPECIFIES THE COLLECTION FACILITIES THAT FAILED IN THE PREVIOUS CALENDAR YEAR TO COLLECT A MINIMUM OF ONE HUNDRED POUNDS BY WEIGHT OF PRIMARY BATTERIES AND WHETHER THESE COLLECTION FACILITIES WILL BE ELIMINATED FROM THE PRODUCER OR A PRIMARY BATTERY STEWARDSHIP ORGANIZATION'S PLAN;

D. THE LOCATIONS FOR ALL COLLECTION POINTS SET UP BY THE PRODUCERS COVERED BY THE PLAN AND CONTACT INFORMATION FOR EACH LOCATION;

E. EXAMPLES AND DESCRIPTION OF EDUCATIONAL MATERIALS USED TO INCREASE COLLECTION;

F. THE MANNER IN WHICH THE COLLECTED PRIMARY BATTERIES WERE MANAGED;

G. ANY MATERIAL CHANGE TO THE PRIMARY BATTERY STEWARDSHIP PLAN; AND

H. THE COST OF IMPLEMENTATION OF THE PROGRAM, INCLUDING THE COSTS OF COLLECTION, RECYCLING, EDUCATION, AND OUTREACH.

2. PLAN AUDIT. ONCE EVERY FIVE YEARS, A PRODUCER OR STEWARDSHIP ORGANIZATION SHALL HIRE AN INDEPENDENT THIRD PARTY TO AUDIT THE PLAN AND PLAN OPERATION. THE AUDITOR SHALL EXAMINE THE EFFECTIVENESS OF THE PROGRAM IN COLLECTING AND RECYCLING PRIMARY BATTERIES. THE INDEPENDENT AUDITOR SHALL EXAMINE THE COST-EFFECTIVENESS OF THE PROGRAM AND COMPARE IT TO THAT OF COLLECTION PROGRAMS FOR PRIMARY BATTERIES IN OTHER JURISDICTIONS. THE INDEPENDENT AUDITOR SHALL MAKE RECOMMENDATIONS TO THE COMMISSIONER ON WAYS TO INCREASE PROGRAM EFFICACY AND COST-EFFECTIVENESS.

S 27-1609. PRIMARY BATTERY STEWARDSHIP ORGANIZATION; REQUIREMENTS; REGISTRATION.

1. PARTICIPATION IN A STEWARDSHIP ORGANIZATION. A PRODUCER MAY MEET THE REQUIREMENTS OF THIS TITLE BY PARTICIPATING IN A PRIMARY BATTERY STEWARDSHIP ORGANIZATION THAT UNDERTAKES THE PRODUCER'S RESPONSIBILITIES UNDER SECTIONS 27-1603, 27-1605, AND 27-1607 OF THIS TITLE.

2. QUALIFICATIONS FOR A STEWARDSHIP ORGANIZATION. TO QUALIFY AS A STEWARDSHIP ORGANIZATION UNDER THIS CHAPTER, AN ORGANIZATION SHALL:

A. COMMIT TO ASSUME THE RESPONSIBILITIES, OBLIGATIONS, AND LIABILITIES OF ALL PRODUCERS PARTICIPATING IN THE STEWARDSHIP ORGANIZATION;

B. NOT CREATE UNREASONABLE BARRIERS FOR PARTICIPATION BY PRODUCERS IN THE STEWARDSHIP ORGANIZATION; AND

C. MAINTAIN A PUBLIC WEBSITE THAT LISTS ALL PRODUCERS AND PRODUCERS' BRANDS COVERED BY THE PRIMARY BATTERY STEWARDSHIP ORGANIZATION'S APPROVED COLLECTION PLAN.

3. REGISTRATION REQUIREMENTS.

A. BEGINNING JANUARY FIRST, TWO THOUSAND SEVENTEEN AND ANNUALLY THEREAFTER, A STEWARDSHIP ORGANIZATION SHALL FILE A REGISTRATION FORM WITH THE COMMISSIONER. THE COMMISSIONER SHALL PROVIDE THE REGISTRATION FORM TO A STEWARDSHIP ORGANIZATION. THE REGISTRATION FORM SHALL INCLUDE:

(I) A LIST OF THE PRODUCERS PARTICIPATING IN THE STEWARDSHIP ORGANIZATION;

(II) THE NAME, ADDRESS, AND CONTACT INFORMATION OF A PERSON RESPONSIBLE FOR ENSURING A PRODUCER'S COMPLIANCE WITH THIS TITLE;

(III) A DESCRIPTION OF HOW THE STEWARDSHIP ORGANIZATION MEETS THE REQUIREMENTS OF SUBDIVISION ONE OF THIS SECTION, INCLUDING ANY REASONABLE REQUIREMENTS FOR PARTICIPATION IN THE STEWARDSHIP ORGANIZATION; AND

(IV) THE NAME, ADDRESS, AND CONTACT INFORMATION OF A PERSON FOR NONMEMBER MANUFACTURER TO CONTRACT ON HOW TO PARTICIPATE IN THE STEWARDSHIP ORGANIZATION TO SATISFY THE REQUIREMENTS OF THIS TITLE.

B. A RENEWAL OF A REGISTRATION WITHOUT CHANGES MAY BE ACCOMPLISHED THROUGH NOTIFYING THE COMMISSIONER ON A FORM PROVIDED BY THE COMMISSIONER.

4. PRIMARY BATTERY-CONTAINING PRODUCTS; NOTIFICATION. PRODUCERS OF A BATTERY-CONTAINING PRODUCT WHO CHOOSE TO FULFILL THE REQUIREMENTS OF THIS TITLE BY PARTICIPATION IN A STEWARDSHIP ORGANIZATION UNDER SUBDIVISION ONE OF THIS SECTION SHALL NOTIFY EACH PRODUCT STEWARDSHIP ORGANIZATION OPERATING AN APPROVED PROGRAM THAT THE PRIMARY BATTERIES CONTAINED WITHIN OR PACKAGED WITH THEIR PRODUCTS ARE COVERED BY A PRIMARY BATTERY PRODUCER PARTICIPATING IN A STEWARDSHIP PROGRAM, AND SHALL PROVIDE THE NAME OF THE PRODUCTS, AS WELL AS THE IDENTITY OF ITS PRIMARY BATTERY SUPPLIER, BRAND, WEIGHT, CHEMISTRY, ESTIMATED NUMBER OF BATTERIES CONTAINED IN, OR PACKAGED WITH, THE PRODUCTS SOLD IN THE STATE, AND SUCH OTHER DETAILS AS 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 TWO OF SECTION 27-1605 OF THIS TITLE,

1 INCLUDE THE PRODUCER OF THE PRIMARY BATTERY-CONTAINING PRODUCT AS A
2 PARTICIPANT IN ITS PROGRAM, SUBJECT TO ANY LIMITATIONS OR EXCEPTIONS AS
3 MAY BE INDICATED BY THE INFORMATION SUBMITTED BY THE PRIMARY
4 BATTERY-CONTAINING PRODUCT PRODUCER.

5 S 27-1611. AGENCY RESPONSIBILITIES; APPROVAL OF PLANS.

6 1. APPROVAL OF PLAN. WITHIN NINETY DAYS AFTER RECEIPT OF A PROPOSED
7 STEWARDSHIP PLAN, THE COMMISSIONER SHALL DETERMINE WHETHER THE PLAN
8 COMPLIES WITH THE REQUIREMENTS OF SECTION 27-1605 OF THIS TITLE. IF THE
9 COMMISSIONER APPROVES A PLAN, THE COMMISSIONER SHALL NOTIFY THE APPLI-
10 CANT OF THE PLAN APPROVAL IN WRITING. IF THE COMMISSIONER REJECTS A
11 PLAN, THE COMMISSIONER SHALL NOTIFY THE APPLICANT IN WRITING OF THE
12 REASONS FOR REJECTING THE PLAN. AN APPLICANT WHOSE PLAN IS REJECTED BY
13 THE COMMISSIONER SHALL SUBMIT A REVISED PLAN TO THE COMMISSIONER WITHIN
14 FORTY-FIVE DAYS OF RECEIVING NOTICE OF REJECTION.

15 2. PLAN AMENDMENT; CHANGES. ANY CHANGES TO A PROPOSED STEWARDSHIP PLAN
16 SHALL BE APPROVED BY THE COMMISSIONER IN WRITING. THE COMMISSIONER, IN
17 HIS OR HER DISCRETION OR AT THE REQUEST OF A PRODUCER, MAY REQUIRE A
18 PRODUCER OR A PRIMARY BATTERY STEWARDSHIP ORGANIZATION TO AMEND AN
19 APPROVED PLAN.

20 3. PUBLIC NOTICE. THE COMMISSIONER SHALL POST ALL PROPOSED AND
21 APPROVED PRIMARY BATTERY STEWARDSHIP PLANS ON THE DEPARTMENT'S WEBSITE,
22 SUBJECT TO THE CONFIDENTIALITY PROVISIONS OF SECTION 27-1615 OF THIS
23 TITLE.

24 4. PUBLIC INPUT. THE COMMISSIONER SHALL ESTABLISH A PROCESS UNDER
25 WHICH A PRIMARY BATTERY STEWARDSHIP PLAN, PRIOR TO PLAN APPROVAL OR
26 AMENDMENT, IS AVAILABLE FOR PUBLIC REVIEW AND COMMENT.

27 5. REGISTRATIONS. THE COMMISSIONER SHALL ACCEPT, REVIEW, AND APPROVE
28 OR DENY PRIMARY BATTERY STEWARDSHIP ORGANIZATION REGISTRATIONS SUBMITTED
29 UNDER SECTION 27-1605 OF THIS TITLE.

30 6. AGENCY WEBSITE. THE COMMISSIONER SHALL MAINTAIN A WEBSITE THAT
31 INCLUDES THE NAMES OF PRODUCERS WITH APPROVED PLANS OR PARTICIPATION IN
32 APPROVED PLANS. THE WEBSITE SHALL LIST ALL OF AN APPROVED PRODUCER'S
33 BRANDS COVERED BY THE STEWARDSHIP PLAN FILED WITH THE COMMISSIONER. THE
34 COMMISSIONER SHALL UPDATE INFORMATION ON THE WEBSITE WITHIN TEN DAYS OF
35 RECEIPT OF NOTICE OF ANY CHANGE TO THE LISTED INFORMATION.

36 7. TERM OF STEWARDSHIP PLAN. A PRIMARY BATTERY STEWARDSHIP PLAN
37 APPROVED BY THE COMMISSIONER UNDER THIS SECTION SHALL HAVE A TERM NOT TO
38 EXCEED FIVE YEARS, PROVIDED THAT THE PRODUCER REMAINS IN COMPLIANCE WITH
39 THE REQUIREMENTS OF THIS TITLE AND THE TERMS OF THE APPROVED PLAN.

40 S 27-1613. RETAILER OBLIGATIONS.

41 1. SALE PROHIBITED. EXCEPT AS SET FORTH UNDER SUBDIVISION TWO OF THIS
42 SECTION, BEGINNING JANUARY FIRST, TWO THOUSAND EIGHTEEN, NO RETAILER
43 SHALL SELL OR OFFER FOR SALE A PRIMARY BATTERY OR PRIMARY BATTERY-CON-
44 TAINING PRODUCT UNLESS THE RETAILER HAS REVIEWED THE DEPARTMENT'S
45 WEBSITE REQUIRED IN SUBDIVISION SIX OF SECTION 27-1611 OF THIS TITLE TO
46 DETERMINE THAT THE PRODUCER OF THE PRIMARY BATTERY OR PRIMARY
47 BATTERY-CONTAINING PRODUCT IS IMPLEMENTING AN APPROVED COLLECTION PLAN
48 OR IS A MEMBER OF A STEWARDSHIP ORGANIZATION.

49 2. INVENTORY EXCEPTION; EXPIRATION OR REVOCATION OF MANUFACTURER
50 REGISTRATION. A RETAILER SHALL NOT BE RESPONSIBLE FOR AN UNLAWFUL SALE
51 OF A PRIMARY BATTERY OR PRIMARY BATTERY-CONTAINING PRODUCT UNDER THIS
52 SECTION IF:

53 A. THE RETAILER PURCHASED THE PRIMARY BATTERY OR PRIMARY BATTERY-CON-
54 TAINING PRODUCT PRIOR TO JANUARY FIRST, TWO THOUSAND EIGHTEEN AND SELLS
55 THE BATTERY OR PRODUCT ON OR BEFORE JANUARY FIRST, TWO THOUSAND NINE-
56 TEEN; OR

1 B. THE PRODUCER'S STEWARDSHIP PLAN EXPIRED OR WAS REVOKED, AND THE
2 RETAILER TOOK POSSESSION OF THE IN-STORE INVENTORY OF PRIMARY BATTERIES
3 OR PRIMARY BATTERY-CONTAINING PRODUCTS PRIOR TO THE EXPIRATION OR REVO-
4 CATION OF THE PRODUCER'S STEWARDSHIP PLAN.

5 S 27-1615. CONFIDENTIALITY OF SUBMITTED DATA.

6 1. CONFIDENTIALITY OF SUBMITTED REPORTS AND DATA. REPORTS AND DATA
7 SUBMITTED UNDER THIS TITLE SHALL BE AVAILABLE FOR PUBLIC INSPECTION AND
8 COPYING, PROVIDED THAT:

9 A. INFORMATION EXEMPTED UNDER THE FREEDOM OF INFORMATION LAW, PURSUANT
10 TO ARTICLE SIX OF THE PUBLIC OFFICERS LAW SHALL NOT BE AVAILABLE FOR
11 PUBLIC INSPECTION AND COPYING.

12 B. THE COMMISSIONER MAY PUBLISH INFORMATION CONFIDENTIAL UNDER PARA-
13 GRAPH A OF THIS SUBDIVISION IN A SUMMARY OR AGGREGATED FORM THAT DOES
14 NOT DIRECTLY OR INDIRECTLY IDENTIFY INDIVIDUAL PRODUCERS, DISTRIBUTORS,
15 OR RETAILERS.

16 2. OMISSION OF TRADE SECRET INFORMATION. THE COMMISSIONER MAY REQUIRE,
17 AS A PART OF A REPORT SUBMITTED UNDER THIS TITLE, THAT THE PRODUCER OR
18 STEWARDSHIP ORGANIZATION SUBMIT A REPORT THAT DOES NOT CONTAIN TRADE
19 SECRET INFORMATION AND IS AVAILABLE FOR PUBLIC INSPECTION AND REVIEW.

20 3. TOTAL WEIGHT OF BATTERIES. THE TOTAL WEIGHT OF BATTERIES COLLECTED
21 UNDER AN APPROVED PRIMARY BATTERY STEWARDSHIP PLAN IS NOT CONFIDENTIAL
22 BUSINESS INFORMATION EXEMPTED UNDER THE FREEDOM OF INFORMATION LAW, AND
23 SHALL BE SUBJECT TO INSPECTION AND REVIEW.

24 S 27-1617. ANTITRUST; CONDUCT AUTHORIZED.

25 1. ACTIVITY AUTHORIZED. A PRODUCER, GROUP OF PRODUCERS, OR STEWARDSHIP
26 ORGANIZATION IMPLEMENTING OR PARTICIPATING IN AN APPROVED STEWARDSHIP
27 PLAN UNDER THIS TITLE FOR THE COLLECTION, TRANSPORT, PROCESSING, AND
28 END-OF-LIFE MANAGEMENT OF PRIMARY BATTERIES ARE INDIVIDUALLY OR JOINTLY
29 IMMUNE FROM LIABILITY FOR THE CONDUCT UNDER STATE LAWS RELATING TO ANTI-
30 TRUST, RESTRAINT OF TRADE, UNFAIR TRADE PRACTICES, AND OTHER REGULATION
31 OF TRADE OR COMMERCE, TO THE EXTENT THAT THE CONDUCT IS REASONABLY
32 NECESSARY TO PLAN, IMPLEMENT, AND COMPLY WITH THE PRODUCER'S, GROUP OF
33 PRODUCERS', OR STEWARDSHIP ORGANIZATION'S CHOSEN SYSTEM FOR MANAGING
34 DISCARDED PRIMARY BATTERIES. THIS SUBDIVISION SHALL ALSO APPLY TO
35 CONDUCT OF A RETAILER OR WHOLESALER PARTICIPATING IN A PRODUCER OR
36 STEWARDSHIP ORGANIZATION'S APPROVED PLAN WHEN THE CONDUCT IS NECESSARY
37 TO PLAN AND IMPLEMENT THE PRODUCER'S OR STEWARDSHIP ORGANIZATION'S
38 ORGANIZED COLLECTION OR RECYCLING SYSTEM FOR DISCARDED BATTERIES.

39 2. LIMITATIONS ON ANTITRUST ACTIVITY. SUBDIVISION ONE OF THIS SECTION
40 SHALL NOT APPLY TO AN AGREEMENT AMONG PRODUCERS, GROUPS OF PRODUCERS,
41 RETAILERS, WHOLESALERS, OR STEWARDSHIP ORGANIZATIONS AFFECTING THE PRICE
42 OF PRIMARY BATTERIES OR PRIMARY BATTERY-CONTAINING PRODUCTS OR ANY
43 AGREEMENT RESTRICTING THE GEOGRAPHIC AREA IN WHICH, OR CUSTOMERS TO
44 WHOM, PRIMARY BATTERIES OR PRIMARY BATTERY-CONTAINING PRODUCTS SHALL BE
45 SOLD.

46 S 27-1619. ADMINISTRATIVE FEE.

47 1. FEE ASSESSED. A PRODUCER OF STEWARDSHIP ORGANIZATION SHALL PAY A
48 FEE OF FIFTEEN THOUSAND DOLLARS ANNUALLY FOR OPERATION UNDER A STEWARD-
49 SHIP PLAN APPROVED BY THE COMMISSIONER UNDER SECTION 27-1611 OF THIS
50 TITLE.

51 2. DISPOSITION OF FEE. THE FEES COLLECTED UNDER SUBDIVISION ONE OF
52 THIS SECTION SHALL BE DEPOSITED IN THE HAZARDOUS WASTE REMEDIAL FUND
53 UNDER SECTION NINETY-SEVEN-B OF THE STATE FINANCE LAW.

54 S 27-1621. PRIVATE RIGHT OF ACTION.

55 1. A PRODUCER OF A PRIMARY BATTERY STEWARDSHIP ORGANIZATION IMPLEMENT-
56 ING AN APPROVED PLAN IN COMPLIANCE WITH THE REQUIREMENTS OF THIS TITLE

1 MAY BRING A CIVIL ACTION AGAINST ANOTHER PRODUCER OR STEWARDSHIP ORGAN-
2 IZATION FOR DAMAGES WHEN:

3 A. THE PLAINTIFF PRODUCER OR STEWARDSHIP ORGANIZATION INCURS MORE THAN
4 THREE THOUSAND DOLLARS IN ACTUAL DIRECT COSTS COLLECTING, HANDLING,
5 RECYCLING, OR PROPERLY DISPOSING OF PRIMARY BATTERIES SOLD OR OFFERED
6 FOR SALE IN THE STATE BY ANOTHER PRODUCER;

7 B. THE PRODUCER FROM WHOM DAMAGES ARE SOUGHT:

8 (I) CAN BE IDENTIFIED AS THE PRODUCER OF THE COLLECTED BATTERIES FROM
9 A BRAND OR MARKING ON THE DISCARDED BATTERY OR FROM OTHER INFORMATION
10 AVAILABLE TO THE PLAINTIFF PRODUCER OR STEWARDSHIP ORGANIZATION; AND

11 (II) DOES NOT OPERATE AN APPROVED BATTERY STEWARDSHIP PROGRAM IN THE
12 STATE.

13 2. A. A PRODUCER OR PRIMARY BATTERY STEWARDSHIP ORGANIZATION IMPL-
14 MENTING AN APPROVED PLAN IN COMPLIANCE WITH THE REQUIREMENTS OF THIS
15 TITLE MAY BRING A CIVIL ACTION FOR DAMAGES AGAINST ANOTHER PRODUCER OR
16 STEWARDSHIP ORGANIZATION THAT IS IMPLEMENTING AN APPROVED PLAN IN THE
17 STATE WHEN:

18 (I) THE PLAINTIFF PRODUCER OR STEWARDSHIP ORGANIZATION SUBMITTED A
19 REIMBURSEMENT REQUEST TO ANOTHER PRODUCER OR STEWARDSHIP ORGANIZATION
20 UNDER THE PROCEDURE APPROVED UNDER PARAGRAPH G OF SUBDIVISION TWO OF
21 SECTION 27-1605 OF THIS TITLE;

22 (II) THE PLAINTIFF PRODUCER DOES NOT RECEIVE REIMBURSEMENT WITHIN:

23 (1) SIXTY DAYS OF THE REQUEST, IF NO INDEPENDENT AUDIT IS REQUESTED
24 UNDER THE PROCEDURE APPROVED UNDER PARAGRAPH G OF SUBDIVISION TWO OF
25 SECTION 27-1605 OF THIS TITLE; OR

26 (2) THIRTY DAYS AFTER COMPLETION OF AN AUDIT IF AN INDEPENDENT AUDIT
27 IS REQUESTED UNDER THE PROCEDURE APPROVED UNDER PARAGRAPH G OF SUBDIVI-
28 SION TWO OF SECTION 27-1605 OF THIS TITLE AND THE AUDIT CONFIRMS THE
29 VALIDITY OF THE REIMBURSEMENT REQUEST.

30 B. A CIVIL ACTION UNDER THIS SUBDIVISION MAY BE BROUGHT AGAINST AN
31 INDIVIDUAL PRODUCER ONLY IF THE PRODUCER IS IMPLEMENTING ITS OWN PRIMARY
32 BATTERY STEWARDSHIP PLAN. A PRODUCER PARTICIPATING IN AN APPROVED PRIMA-
33 RY BATTERY STEWARDSHIP PLAN COVERING MULTIPLE PRODUCERS SHALL NOT BE
34 SUED INDIVIDUALLY FOR REIMBURSEMENT. AN ACTION AGAINST A PRODUCER
35 PARTICIPATING IN A STEWARDSHIP PLAN COVERING MULTIPLE PRODUCERS SHALL BE
36 BROUGHT AGAINST THE STEWARDSHIP ORGANIZATION IMPLEMENTING THE PLAN.

37 3. AS USED IN THIS SECTION, "DAMAGES" MEANS:

38 A. THE ACTUAL, DIRECT COSTS A PLAINTIFF PRODUCER INCURS IN COLLECTING,
39 HANDLING, RECYCLING, OR PROPERLY DISPOSING OF PRIMARY BATTERIES REASON-
40 ABLY IDENTIFIED AS HAVING ORIGINATED FROM A NONCOMPLIANT PRODUCER;

41 B. EXEMPLARY DAMAGES NOT EXCEEDING THREE TIMES THE COSTS INCURRED
42 UNDER PARAGRAPH A OF THIS SUBDIVISION; AND

43 C. THE PREVAILING PLAINTIFF PRODUCER'S ATTORNEY'S FEES AND COSTS OF
44 BRINGING THE ACTION.

45 S 27-1623. REIMBURSEMENT OF RECHARGEABLE BATTERY STEWARDS.

46 1. REIMBURSEMENT OF RECHARGEABLE BATTERY STEWARDS. A PRIMARY BATTERY
47 PRODUCER OR PRIMARY BATTERY STEWARDSHIP ORGANIZATION SHALL REIMBURSE
48 OPERATORS OF A BONA FIDE RECHARGEABLE BATTERY STEWARDSHIP ORGANIZATION,
49 OR OTHER PERSON OPERATING A BONA FIDE RECHARGEABLE BATTERY STEWARDSHIP
50 PROGRAM, FOR ACTUAL DIRECT COSTS PER UNIT OF WEIGHT INCURRED BY THE BONA
51 FIDE RECHARGEABLE BATTERY STEWARDSHIP ORGANIZATION IN THE COLLECTION OF
52 PRIMARY BATTERIES SUPPLIED BY PRODUCERS PARTICIPATING IN AN APPROVED
53 PRIMARY BATTERY STEWARDSHIP PROGRAM IN THE STATE. DIRECT COSTS INCLUDE
54 COSTS OF COLLECTION, TRANSPORT, RECYCLING AND OTHER ACTUAL ENVIRONMENTAL
55 MANAGEMENT COSTS, PLUS AN ADDITIONAL NEGOTIATED AMOUNT NOT TO EXCEED TEN
56 PERCENT TO REFLECT A REASONABLE CONTRIBUTION FOR INDIRECT COSTS, INCLUD-

1 ING PERMITTING FEES, OVERHEAD, PERSONNEL COSTS, ADMINISTRATION, INSUR-
2 ANCE, LEGAL OR ACCOUNTING COSTS, EDUCATION AND OUTREACH, OR ANY OTHER
3 COSTS.

4 2. REQUEST FOR AUDIT. A PRODUCER OR PRIMARY BATTERY STEWARDSHIP ORGAN-
5 IZATION THAT RECEIVES A REQUEST FOR REIMBURSEMENT FROM A RECHARGEABLE
6 BATTERY STEWARD MAY, PRIOR TO PAYMENT AND WITHIN THIRTY DAYS OF THE
7 REQUEST FOR REIMBURSEMENT, REQUEST AN INDEPENDENT AUDIT OF THE REQUESTED
8 REIMBURSEMENT COSTS. IF THE INDEPENDENT AUDIT CONFIRMS THE REASONABLE-
9 NESS OF THE REIMBURSEMENT REQUEST, THE PRODUCER OR PRIMARY BATTERY
10 STEWARDSHIP ORGANIZATION REQUESTING THE AUDIT SHALL PAY THE COST OF THE
11 AUDIT.

12 3. A. CIVIL ACTION FOR FAILURE TO REIMBURSE. A RECHARGEABLE BATTERY
13 STEWARD OR OTHER PERSON OPERATING A BONA FIDE PROGRAM TO COLLECT USED
14 RECHARGEABLE BATTERIES FOR RECYCLING IN THE STATE MAY BRING A CIVIL
15 ACTION FOR DAMAGES AGAINST A PRIMARY BATTERY PRODUCER OR PRIMARY BATTERY
16 STEWARDSHIP ORGANIZATION THAT IS IMPLEMENTING AN APPROVED PLAN IN THE
17 STATE WHEN:

18 (I) THE RECHARGEABLE BATTERY STEWARD SUBMITTED A REIMBURSEMENT REQUEST
19 TO ANOTHER PRODUCER OR STEWARDSHIP ORGANIZATION UNDER SUBDIVISION TWO OF
20 THIS SECTION;

21 (II) THE RECHARGEABLE BATTERY STEWARD DOES NOT RECEIVE REIMBURSEMENT
22 WITHIN:

23 (1) SIXTY DAYS OF THE REQUEST, IF NO INDEPENDENT AUDIT IS REQUESTED
24 UNDER SUBDIVISION TWO OF THIS SECTION; OR

25 (2) THIRTY DAYS AFTER COMPLETION OF AN AUDIT IF AN INDEPENDENT AUDIT
26 IS REQUESTED UNDER SUBDIVISION TWO OF THIS SECTION AND THE AUDIT
27 CONFIRMS THE VALIDITY OF THE REIMBURSEMENT REQUEST.

28 B. A CIVIL ACTION UNDER THIS SUBDIVISION MAY BE BROUGHT AGAINST AN
29 INDIVIDUAL PRIMARY BATTERY PRODUCER ONLY IF THE PRODUCER IS IMPLEMENTING
30 ITS OWN PRIMARY BATTERY STEWARDSHIP PLAN OR THE PRODUCER HAS FAILED TO
31 REGISTER TO PARTICIPATE IN A PLAN. A PRIMARY BATTERY PRODUCER PARTIC-
32 IPATING IN AN APPROVED PRIMARY BATTERY STEWARDSHIP PLAN COVERING MULTI-
33 PLE PRODUCERS SHALL NOT BE SUED INDIVIDUALLY FOR REIMBURSEMENT. AN
34 ACTION AGAINST A PRIMARY BATTERY PRODUCER PARTICIPATING IN A STEWARDSHIP
35 PLAN COVERING MULTIPLE PRODUCERS SHALL BE BROUGHT AGAINST THE STEWARD-
36 SHIP ORGANIZATION IMPLEMENTING THE PLAN.

37 4. PROCEDURE; BONA FIDE RECHARGEABLE BATTERY STEWARDSHIP PROGRAM.

38 A. THE COMMISSIONER MAY REQUIRE A PRIMARY BATTERY PRODUCER OR A PRIMA-
39 RY BATTERY STEWARDSHIP ORGANIZATION TO SUBMIT THE PROCEDURE FOR
40 REIMBURSEMENT UNDER THIS SECTION TO THE COMMISSIONER FOR APPROVAL.

41 B. THE COMMISSIONER, IN HIS OR HER DISCRETION, SHALL APPROVE A
42 RECHARGEABLE BATTERY STEWARDSHIP PROGRAM AS BONA FIDE UNDER THIS
43 SECTION.

44 S 27-1625. PENALTIES.

45 A PRODUCER WHO VIOLATES THE REQUIREMENTS OF THIS TITLE SHALL BE
46 SUBJECT TO A CIVIL PENALTY NOT TO EXCEED ONE THOUSAND DOLLARS PER DAY
47 FOR EACH DAY OF NONCOMPLIANCE.

48 S 27-1627. RULEMAKING; PROCEDURE.

49 THE COMMISSIONER MAY ADOPT RULES OR PROCEDURES TO IMPLEMENT THE
50 REQUIREMENTS OF THIS TITLE.

51 S 2. Subdivision 2 of section 3-0301 of the environmental conservation
52 law is amended by adding a new paragraph dd to read as follows:

53 DD. ENFORCE A PRODUCT STEWARDSHIP PROGRAM, INCLUDING THE COLLECTION
54 AND DISPOSAL OF PRIMARY BATTERIES, PURSUANT TO TITLE SIXTEEN OF ARTICLE
55 TWENTY-SEVEN OF THIS CHAPTER.

56 S 3. This act shall take effect immediately.