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State of Minnesota  
**HOUSE OF REPRESENTATIVES**

EIGHTY-SIXTH  
SESSION

**HOUSE FILE No. 2407**

May 18, 2009

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The bill was read for the first time and referred to the Committee on Environment Policy and Oversight

1.1 A bill for an act  
1.2 relating to environment; providing a product stewardship framework operated  
1.3 and funded by producers to collect, recycle, and dispose of products at the end  
1.4 of their useful lives; creating an account; providing civil penalties; requiring  
1.5 a report; appropriating money; 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. **[115A.1210] TITLE.**

1.9 This act may be cited as the Minnesota Product Stewardship Act of 2009.

1.10 Sec. 2. **[115A.1211] DEFINITIONS.**

1.11 Subdivision 1. **Scope.** For the purposes of sections 115A.1210 to 115A.1223, the  
1.12 following terms have the meaning given.

1.13 Subd. 2. **Board.** "Board" means the citizens' board of the Minnesota Pollution  
1.14 Control Agency.

1.15 Subd. 3. **Brand.** "Brand" means a name, symbol, word, or mark that identifies a  
1.16 product, rather than its components, and attributes the product to the owner of the brand as  
1.17 the producer.

1.18 Subd. 4. **Commissioner.** "Commissioner" means the commissioner of the Pollution  
1.19 Control Agency.

1.20 Subd. 5. **Covered product.** "Covered product" means a product designated by  
1.21 the legislature under section 115A.1214 to be subject to management under a product  
1.22 stewardship program. Covered product does not include a video display device or covered  
1.23 electronic device as defined under section 115A.1310.

2.1            Subd. 6. **Final disposition.** "Final disposition" means the point beyond which  
2.2 no further processing takes place and materials from a covered product have been  
2.3 transformed for direct use as a feedstock in producing new products or disposed of or  
2.4 managed in permitted facilities.

2.5            Subd. 7. **Hazardous substance.** "Hazardous substance" has the meaning given in  
2.6 section 182.651, subdivision 14.

2.7            Subd. 8. **Orphan product.** "Orphan product" means a covered product that lacks a  
2.8 producer's brand, or for which the producer is no longer in business and has no successor  
2.9 in interest, or that bears a brand for which the agency cannot identify an owner.

2.10           Subd. 9. **Person.** "Person" has the meaning given in section 327B.01, subdivision  
2.11 17.

2.12           Subd. 10. **Processing.** "Processing" means recovering materials from unwanted  
2.13 products for use as feedstock in new products.

2.14           Subd. 11. **Producer.** "Producer" means a person that:

2.15           (1) has or had legal ownership of the brand, brand name, or cobrand of a covered  
2.16 product sold or offered for sale in Minnesota;

2.17           (2) imports or has imported a covered product branded by a producer that meets the  
2.18 requirements of clause (1) when the producer has no physical presence in the United States;

2.19           (3) makes or made an unbranded product that is or was sold or offered for sale in  
2.20 Minnesota; or

2.21           (4) sells or sold at wholesale or retail a covered product, does not have legal  
2.22 ownership of the brand, and elects to fulfill the responsibilities of the producer for that  
2.23 product.

2.24           Subd. 12. **Product stewardship.** "Product stewardship" means a requirement  
2.25 for a producer of a covered product to manage and reduce adverse safety, health, and  
2.26 environmental impacts of a covered product throughout its life cycle, including financing  
2.27 and providing for collection, transportation, reuse, recycling, processing, and final  
2.28 disposition of the product.

2.29           Subd. 13. **Product stewardship plan or plan.** "Product stewardship plan" or "plan"  
2.30 means a detailed plan required under section 115A.1216 that describes the manner in  
2.31 which a product stewardship program will be implemented.

2.32           Subd. 14. **Product stewardship program or program.** "Product stewardship  
2.33 program" or "program" means a program financed and operated by producers to collect,  
2.34 transport, and recycle unwanted products.

2.35           Subd. 15. **Recycling.** "Recycling" has the meaning given in section 115A.03,  
2.36 subdivision 25b.

3.1            Subd. 16. **Retailer.** "Retailer" means a person that offers covered products for sale  
 3.2 at retail through any means, including, but not limited to, remote offerings such as sales  
 3.3 outlets, catalogs, or the Internet. For purposes of this subdivision, "sale at retail" does not  
 3.4 include a sale that is a wholesale transaction with a distributor or a retailer.

3.5            Subd. 17. **Stewardship organization.** "Stewardship organization" means an  
 3.6 organization designated by a group of producers to act as an agent on behalf of each  
 3.7 producer to operate a product stewardship program.

3.8            Subd. 18. **Unwanted product.** "Unwanted product" means a covered product that is  
 3.9 no longer wanted by its owner or that has been abandoned or discarded or is intended to be  
 3.10 discarded by its owner.

3.11            **Sec. 3. [115A.1213] LIST OF POTENTIAL COVERED PRODUCTS.**

3.12            Subdivision 1. **List.** (a) Beginning July 1, 2012, and each year thereafter, the agency  
 3.13 shall submit a list of potential covered products to the board.

3.14            (b) In determining whether a product should be included on the list, the agency  
 3.15 must consider at least the following factors regarding the manufacture, use, or end-of-life  
 3.16 management of the product:

3.17            (1) the degree to which the product poses adverse environmental and public health  
 3.18 impacts, including the presence of toxic and hazardous substances;

3.19            (2) whether the product poses a threat of increased greenhouse gas emissions;

3.20            (3) the existence of opportunities to reduce toxicity;

3.21            (4) whether the product has potential for enhanced resource conservation, including:

3.22            (i) energy conservation, materials conservation, or resource recovery; or

3.23            (ii) opportunities for increased reuse, recycling, or recycled content;

3.24            (5) the degree to which end-of-life management of the product currently places a  
 3.25 significant financial burden on governments and taxpayers, including those paying taxes to  
 3.26 manage solid waste;

3.27            (6) the difficulty of managing the product, including its ability to act as a contaminant  
 3.28 in existing solid waste management and recycling systems;

3.29            (7) opportunities for existing and new businesses and infrastructure to manage  
 3.30 products;

3.31            (8) the level of collection and recycling infrastructure currently in place;

3.32            (9) the success of product stewardship programs operating in other jurisdictions; and

3.33            (10) the willingness of potential partners to participate in a product stewardship  
 3.34 program.

4.1 Subd. 2. **Notice; comments; hearing.** (a) Within 30 days of submitting the list  
4.2 of potential covered products to the board, the agency shall notify in writing potential  
4.3 interested parties, including, but not limited to, manufacturers of products on the list that  
4.4 offer the products for sale in Minnesota, retailers, recyclers, local units of government,  
4.5 and other interested parties.

4.6 (b) The board shall accept written comments on the proposed inclusion of products  
4.7 on the covered products list and shall provide for at least one public hearing before  
4.8 finalizing the products on the list.

4.9 Subd. 3. **Report to legislature.** Within 30 days of the last public hearing on the  
4.10 list of proposed covered products, the agency shall report the following to the chairs and  
4.11 ranking minority members of the house of representatives and senate committees with  
4.12 jurisdiction over environmental policy, environmental finance, and commerce:

4.13 (1) a list of potential covered products that the agency recommends should be  
4.14 managed under a product stewardship program;

4.15 (2) a recommendation for each product on the list in clause (1) on whether the  
4.16 legislature should authorize manufacturers to engage in anticompetitive conduct to the  
4.17 extent necessary to plan and implement a product stewardship program and provide  
4.18 producers with immunity from liability under state and federal law relating to antitrust,  
4.19 restraint of trade, unfair trade practices, and other regulation of trade or commerce; and

4.20 (3) for each product on the list in clause (1), a recommended annual fee producers  
4.21 may be charged to recover the agency's costs to administer the product stewardship  
4.22 program.

4.23 **Sec. 4. [115A.1214] PRODUCT STEWARDSHIP PROGRAM INITIATION.**

4.24 (a) A producer or group of producers may voluntarily implement a product  
4.25 stewardship program for a specific product by notifying the agency in writing of the intent  
4.26 to comply with sections 115A.1215 to 115A.1217.

4.27 (b) The agency may initiate a product stewardship program for a specific product  
4.28 only if legislation is enacted directing the agency to do so. The legislation must also  
4.29 address the items in section 115A.1213, subdivision 3, clauses (2) and (3).

4.30 (c) Within 30 days of the effective date of legislation requiring a product stewardship  
4.31 program for a specific product, the agency shall notify producers that offer the product for  
4.32 sale in Minnesota that a product stewardship plan with respect to the product must be filed  
4.33 under section 115A.1216 within 180 days of the notice.

5.1       Sec. 5. **[115A.1215] PARTICIPATION IN PRODUCT STEWARDSHIP**  
5.2 **PROGRAM.**

5.3       Subdivision 1. Requirement for sale. (a) On and after the effective date of a  
5.4 product stewardship plan approved by the agency, no producer, wholesaler, or retailer of  
5.5 a covered product may sell or offer for sale a covered product in Minnesota unless the  
5.6 producer of the covered product participates in a product stewardship program for that  
5.7 product. Each producer participating in a product stewardship program must:

5.8       (1) operate, individually or jointly with other producers, a product stewardship  
5.9 program approved by the agency or enter into an agreement with a stewardship  
5.10 organization to operate, on the producer's behalf, a product stewardship program approved  
5.11 by the agency; and

5.12       (2) verify in writing to a person selling a covered product in this state at least 60  
5.13 days before the effective date of the product stewardship program that the producer is  
5.14 participating in a product stewardship program approved by the agency.

5.15       Subd. 2. Product stewardship program costs. (a) A producer, group of producers,  
5.16 or stewardship organization must pay all administrative and operational costs associated  
5.17 with their product stewardship program, including the cost of collection, transportation,  
5.18 recycling, and final disposition of unwanted products.

5.19       (b) No fee may be charged to cover the costs of a product stewardship program at  
5.20 the time of sale of the covered product or when unwanted products are collected for  
5.21 recycling or disposal.

5.22       Subd. 3. Inspections and audits. The agency may inspect, audit, or review  
5.23 audits of processing and disposal facilities used to fulfill the requirements of a product  
5.24 stewardship program.

5.25       Sec. 6. **[115A.1216] PRODUCT STEWARDSHIP PLAN.**

5.26       Subdivision 1. Plan submission. A producer, group of producers, or product  
5.27 stewardship organization shall submit a product stewardship plan to the agency for review  
5.28 180 days prior to the offering for sale of a covered product in this state.

5.29       Subd. 2. Consultation required. A producer, group of producers, or product  
5.30 stewardship organization must consult with stakeholders during the development of the  
5.31 plan, solicit stakeholder comments, and attempt to address any stakeholder concerns  
5.32 regarding the plan before submitting the plan to the agency for review.

5.33       Subd. 3. Plan content. A product stewardship plan must contain:

5.34       (1) certification that the product stewardship program will accept all unwanted  
5.35 products regardless of who produced them, including orphan products;

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

6.3 (3) a description of the methods by which unwanted products will be collected in all  
6.4 counties in the state, including the entities that will provide collection services, and an  
6.5 explanation of how the collection system will be convenient and adequate to serve the  
6.6 needs of residents in both urban and rural areas;

6.7 (4) the names and locations of transporters, recyclers, and disposal facilities that will  
6.8 receive unwanted products or their components;

6.9 (5) a description of how unwanted products will be safely and securely transported,  
6.10 tracked, and handled from collection through final disposal;

6.11 (6) a description of how unwanted products and their components will be processed,  
6.12 recycled, and disposed of, including what steps will be taken to ensure environmentally  
6.13 sound management;

6.14 (7) a description of the promotion and outreach activities required under section  
6.15 115A.1217 and how the activities' effectiveness will be evaluated;

6.16 (8) anticipated resources and financing mechanisms to implement the plan;

6.17 (9) evidence of adequate insurance and financial assurance for collection, handling,  
6.18 and disposal operations;

6.19 (10) proposed performance goals, including an estimate of the percentage of  
6.20 unwanted covered products that will be collected during each of the three years subsequent  
6.21 to the filing of the product stewardship plan;

6.22 (11) product design changes that will be considered to reduce toxicity, water use, or  
6.23 energy use or to increase recycled content, recyclability, or product longevity; and

6.24 (12) an effective date when collection of unwanted products will begin.

6.25 Subd. 4. **Agency review and approval.** (a) No producer, group of producers, or  
6.26 stewardship organization may begin collecting unwanted products until it has received  
6.27 written approval of its product stewardship plan from the agency.

6.28 (b) Product stewardship plans must be submitted to the agency for approval. The  
6.29 agency may consult with other state agencies regarding the plan.

6.30 (c) Within 90 days after receipt of a plan, the agency shall determine whether the  
6.31 plan complies with sections 115A.1210 to 115A.1223. If the agency approves a plan, the  
6.32 agency shall notify the applicant of the plan approval in writing. If the agency rejects a  
6.33 plan, the agency shall notify the applicant in writing of the reasons for rejecting the plan.  
6.34 An applicant whose plan has been rejected by the agency must submit a revised plan to the  
6.35 agency within 60 days after receiving notice of the rejection.

7.1 (d) At least every four years, a producer, group of producers, or stewardship  
 7.2 organization operating a product stewardship program must update its product stewardship  
 7.3 plan and submit the updated plan to the agency for review and approval.

7.4 (e) Any proposed changes to a product stewardship plan must be approved by the  
 7.5 agency in writing.

7.6 Subd. 5. **Plan availability.** All product stewardship plans approved by the agency  
 7.7 shall be placed on the agency's Web site and made available at the agency's headquarters  
 7.8 for public review within 30 days of the agency's approval.

7.9 Sec. 7. **[115A.1217] PRODUCT STEWARDSHIP PROGRAM PROMOTION**  
 7.10 **AND OUTREACH.**

7.11 (a) A product stewardship program must promote the program to retailers,  
 7.12 wholesalers, collectors, and other interested parties.

7.13 (b) A product stewardship program must prepare education and outreach materials  
 7.14 that publicize the location and operation of collection locations throughout the state  
 7.15 and disseminate them to interested parties. The program must also utilize a Web site  
 7.16 publicizing collection locations and program operations.

7.17 Sec. 8. **[115A.1218] ANNUAL REPORT.**

7.18 By July 1 following the first full year after the effective date of a product stewardship  
 7.19 plan, and each July 1 thereafter, each producer, group of producers, or stewardship  
 7.20 organization operating a product stewardship program must submit to the agency a report  
 7.21 on the preceding year's activities, describing:

7.22 (1) a list of all participating producers and their brands and trademarks, if applicable;

7.23 (2) the amount, by weight, of unwanted products collected from each collection  
 7.24 site in the state;

7.25 (3) the degree to which recovery rates established in the product stewardship plan  
 7.26 were achieved and, if the product stewardship program did not attain those recovery rates,  
 7.27 what actions will be taken in the future to do so;

7.28 (4) the weight of unwanted products processed at each processing facility and  
 7.29 disposed of at each disposal facility and a description of the methods used at each  
 7.30 processing facility, including subcontractors used through final disposition that processed  
 7.31 or disposed of unwanted products containing hazardous substances and the subcontractor  
 7.32 facility locations;

8.1 (5) the degree to which policies and procedures in the product stewardship plan for  
8.2 collection, transportation, processing, and final disposition of unwanted products were  
8.3 followed during the preceding year and a description of, and reasons for, any deviations;

8.4 (6) the product stewardship program financing system;

8.5 (7) the promotion and outreach activities implemented, including an analysis of the  
8.6 activities' effectiveness;

8.7 (8) how the product stewardship program complied with any other elements in  
8.8 the plan;

8.9 (9) actions taken to reduce the life cycle impacts of the covered products, including  
8.10 how product design has been improved to reduce toxicity, waste, and water and energy  
8.11 use; increase recycled content; and make products more easily recyclable; and

8.12 (10) other information the agency may request. All reports submitted to the agency  
8.13 must be made available to the public on the agency's Web site and at the agency's  
8.14 headquarters within 30 days of receipt.

8.15 **Sec. 9. [115A.1218] FEES.**

8.16 Any fees the agency is directed to establish by the legislature under section  
8.17 115A.1214 must be paid to the commissioner and deposited in the account established in  
8.18 section 115A.1220.

8.19 **Sec. 10. [115A.1219] ENFORCEMENT.**

8.20 Subdivision 1. **Generally.** Sections 115A.1410 to 115A.1423 shall be enforced in  
8.21 the manner provided by section 115.071, subdivisions 1 to 6.

8.22 Subd. 2. **Producer penalties.** (a) Upon first determining that a producer is offering  
8.23 a covered product for sale in this state but is not participating in a product stewardship  
8.24 program approved by the agency, the agency shall send the producer a written warning  
8.25 that the producer is in violation of section 115A.1215, subdivision 1.

8.26 (b) A producer not participating in a product stewardship program approved by the  
8.27 agency whose covered product continues to be sold in this state 60 days after receiving  
8.28 a written warning from the agency under paragraph (a) must be assessed a penalty of  
8.29 \$10,000 for each calendar day that the violation continues.

8.30 (c) If a product stewardship plan approved under section 115A.1216, subdivision  
8.31 4, is not fully implemented within 30 days of the start date contained in the plan, the  
8.32 agency shall assess a penalty of \$5,000 and notify each producer associated with the  
8.33 product stewardship program. If, after an additional 30 days, an approved plan is not fully  
8.34 implemented, the agency shall issue a second violation notice and assess a penalty of



9.1 \$10,000 to each producer associated with the product stewardship program. Subsequent  
9.2 violations occur each 30 days that the approved plan is not fully implemented.

9.3 (d) The agency shall send a written warning to a producer that fails to submit a  
9.4 product stewardship plan, update or change the plan when required, or submit an annual  
9.5 report as required under sections 115A.1210 to 115A.1223. The written warning must  
9.6 include compliance requirements and notification that the requirements must be met  
9.7 within 60 days. If requirements are not met within 60 days, the agency shall issue a second  
9.8 violation notice and assess the producer a penalty of \$10,000 per day of noncompliance  
9.9 starting with the first day of notice of noncompliance.

9.10 (e) A producer may appeal penalties prescribed under this section to the board.

9.11 (f) All penalties levied under this subdivision must be paid to the commissioner and  
9.12 deposited in the account established in section 115A.1220.

9.13 Subd. 3. **Retailer penalties.** (a) The agency shall provide on its Web site a list of all  
9.14 producers participating in product stewardship programs the agency has approved and a  
9.15 list of all producers the agency has identified as noncompliant with sections 115A.1210  
9.16 to 115A.1223.

9.17 (b) It is the responsibility of a retailer offering covered products for sale in this state  
9.18 to view the agency's Web site to determine if producers of covered products the retailer is  
9.19 offering for sale in this state are in compliance with sections 115A.1210 to 115A.1223.  
9.20 If a retailer is unsure of the status of the producer or believes the producer is not in  
9.21 compliance, the retailer shall contact the agency to determine the producer's status.

9.22 (c) The agency shall send a written notice to a retailer known to be selling a covered  
9.23 product in this state from producers that are not participating in an approved product  
9.24 stewardship program or that are not in compliance with other provisions of sections  
9.25 115A.1210 to 115A.1223.

9.26 (d) A retailer that continues to sell a covered product from a producer that is not  
9.27 participating in an approved product stewardship program 60 days after receiving a  
9.28 written notice from the agency must be assessed a penalty of \$10,000 for each day of  
9.29 noncompliance.

9.30 (e) A retailer that continues to sell a covered product from a producer that is not in  
9.31 compliance with other provisions of sections 115A.1210 to 115A.1223 must be assessed a  
9.32 penalty of \$1,000 for each day of noncompliance.

9.33 (f) A person primarily engaged in the business of reuse and resale of used products is  
9.34 not subject to this section when selling a used covered product, for use in the same manner  
9.35 and purpose for which the product was originally purchased.

10.1 (g) A retailer that sells a covered product from a physical outlet located in Minnesota  
 10.2 and that is in possession of an existing stock of covered products on-site on the effective  
 10.3 date of the product stewardship plan may exhaust the existing stock of the covered product.

10.4 (h) All penalties levied under this subdivision must be deposited in the product  
 10.5 stewardship program account established under section 115A.1220.

10.6 **Sec. 11. [115A.1220] PRODUCT STEWARDSHIP PROGRAM ACCOUNT.**

10.7 The product stewardship program account is created in the environmental fund. The  
 10.8 commissioner must deposit all fees established by the legislature in section 115A.1214  
 10.9 and all receipts from penalties collected under section 115A.1219 into the account. Any  
 10.10 interest earned on the account must be credited to the account. Funds in the account  
 10.11 at the end of a fiscal year do not cancel to the general fund, but remain in the account.  
 10.12 Money from the account is appropriated annually to the commissioner for the purpose of  
 10.13 administering sections 115A.1210 to 115A.1223.

10.14 **Sec. 12. [115A.1222] SOLICITATION OF COMMENTS.**

10.15 Beginning July 1, 2013, and every other year thereafter, the agency shall solicit  
 10.16 comments from local units of government, citizens, and nonprofit organizations to report  
 10.17 their satisfaction with the services provided by product stewardship programs. The agency  
 10.18 must use this information to determine the degree to which the product stewardship  
 10.19 programs are meeting the convenience requirements under section 115A.1216 and in  
 10.20 reviewing proposed updates or changes to product stewardship plans.

10.21 **Sec. 13. [115A.1223] REPORT TO LEGISLATURE.**

10.22 Beginning December 1, 2014, and each year thereafter, the commissioner shall  
 10.23 submit a report to the chairs and ranking minority members of the senate and house of  
 10.24 representatives committees with primary jurisdiction over energy policy and energy  
 10.25 finance on the implementation and operation of sections 115A.1210 to 115A.1223. The  
 10.26 report must include, for each covered product for which a product stewardship program  
 10.27 is operating in the state:

10.28 (1) the total amount, by weight, of covered products and components that has been  
 10.29 collected and recycled and that has undergone final disposition;

10.30 (2) the amount of fees collected from producers;

10.31 (3) a description of the collection programs, including the location of collection sites;

10.32 (4) the costs to the agency of administering the product stewardship program and  
 10.33 any recommended adjustments to fees paid by producers;

- 11.1 (5) a summary of comments received under section 115A.1222; and
- 11.2 (6) recommendations to improve the operation of product stewardship programs.
  
- 11.3 Sec. 14. **EFFECTIVE DATE.**
- 11.4 Sections 1 to 13 are effective the day following final enactment.