

Senate Bill No. 220

Passed the Senate September 12, 2007

Secretary of the Senate

Passed the Assembly September 10, 2007

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2007, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 111070, 111115, 111130, and 111170 of, and to add Sections 111071 and 111198 to, the Health and Safety Code, relating to drinking water.

LEGISLATIVE COUNSEL'S DIGEST

SB 220, Corbett. Vended water.

Existing law prescribes various quality and labeling standards for bottled water and vended water, including mineral water, and limits the levels of certain contaminants that may be contained in those water products. Violation of these provisions is a crime.

Existing law requires the State Department of Public Health to perform various duties under these provisions.

Existing law establishes a fee schedule for annual bottled and vended water licenses, and sets the fee for water-vending machines at \$10.25.

This bill would increase the annual license fee for a water-vending machine to \$40.

This bill would also require, as a condition of licensure, a water-bottling plant, as defined, to annually prepare a bottled water report, as specified, to make the report available to each customer, upon request, and to prepare the report in English, Spanish, and in other languages that exceed 10% of the state's population.

Existing law requires the department to require that each water-vending machine, retail water treatment plant, water hauler vehicle and facility, and private water source be maintained in a clean and sanitary condition at all times.

This bill would, effective January 1, 2009, require water-vending machines to be cleaned and serviced at least once every 31 days. The bill would also require, as of January 1, 2009, that maintenance and complaint records be kept by the owner for a minimum of 2 years and be made available to the department upon request. It would require, commencing January 1, 2009, the department to conduct annual inspections of not less than 20% of the licensed water-vending machines in the state, as provided, would authorize the department to embargo the machine or impose a fine, or both, if a violation is found, would authorize the department to conduct

reinspections of licensed water-vending machines as necessary to prevent repeated or continuing violations, and would require the department to assess a fee to cover the costs of performing a reinspection conducted within 12 months of the initial inspection.

Existing law requires each container of bottled water sold in this state, each water-vending machine, and each container provided by retail water facilities located in this state to contain specified information and to be clearly labeled in an easily readable format.

This bill, commencing January 1, 2009, would require each label on bottled water sold at retail or wholesale in this state in a beverage container to also include the name and contact information for the bottler or brand owner, the source of the bottled water, and a statement that contains specified information, as provided. The bill would also require bottlers that distribute directly to consumers to provide a statement on each billing statement that includes certain contact information, and the means by which a customer may obtain information relating to water quality.

Existing law requires that each water-vending machine, retail water facility, and private water source that sells water at retail display prescribed information, including, but not limited to, a telephone number for further information, service, or complaints.

This bill would require that the telephone number be a toll-free or local telephone number, that the toll-free telephone number of the department's food and drug branch also be displayed, and that the notice include prescribed license, maintenance, and suitable container information.

By changing the definition of existing crimes and by creating a new crime, this bill would impose a state-mandated local program.

The bill would also require the department to submit in its annual budget report to the Legislature specified information relating to the licensed entities it regulates pursuant to these provisions.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) According to a survey conducted in 2002 by the Public Policy Institute of California, 39 percent of all adults in California rely on bottled and vended water as their primary source of drinking water.

(b) Among low-income and immigrant communities, vended water is the alternative drinking water of choice, due to its lower cost.

(c) Many water vending machines fail to meet state health and consumer protection standards as a result of insufficient routine monitoring.

(d) Consumers of bottled and vended water should be afforded the same water quality “right to know” protections and regulatory oversight of bottled and vended water products as those established for tap water.

SEC. 2. Section 111070 of the Health and Safety Code is amended to read:

111070. (a) “Bottled water,” means any water that is placed in a sealed container at a water-bottling plant to be used for drinking, culinary, or other purposes involving a likelihood of the water being ingested by humans. Bottled water shall not include water packaged with the approval of the department for use in a public emergency.

(b) “Vended water” means any water that is dispensed by a water-vending machine, retail water facility, or water from a private water source, or other water as defined in Section 111170 that is not placed by a bottler in sealed containers, and that is dispensed by a water-vending machine, retail water facility, water hauler, or any other person or facility for drinking, culinary, or other purposes involving a likelihood of the water being ingested by humans. “Vended water,” does not include water from a public water system that has not undergone additional treatment. Water sold without further treatment is not “vended water” and shall be labeled in accordance with Section 111170.

(c) “Water-bottling plant” means any facility in which bottled water is produced.

(d) A “water-vending machine” means a water-connected vending machine designed to dispense drinking water, or purified or other water products. The machines shall be designed to reduce or remove turbidity, off-tastes, and odors and to provide disinfection treatment. Processes for dissolved solids reduction or removal shall also be used.

(e) “Water hauler,” means any person who hauls water in bulk by any means of transportation if the water is to be used for drinking, culinary, or other purposes involving a likelihood of the water being ingested by humans.

“In bulk,” as used in this subdivision, means containers having capacities of 250 gallons or greater.

(f) “Retail water facility” means any commercial establishment where vended water is sold, and placed in customer’s containers, or placed in containers sold or given to customers who come to the establishment to obtain water.

(g) “Private water source,” means a privately owned source of water, other than a public water system, that is used for bottled or vended water and meets the requirements of an approved source for bottled water as defined in Section 129.3 of Title 21 of the Code of Federal Regulations.

(h) “Bottled water distributor” means any person, other than an employee or representative of a bottled water plant, who delivers bottled water directly to customers.

SEC. 3. Section 111071 is added to the Health and Safety Code, to read:

111071. (a) As a condition of licensure, each bottled water plant, as defined in subdivision (c) of Section 111070, shall annually prepare a bottled water report and shall, upon request, make that report available to each customer.

(b) The report shall be prepared in English, Spanish, and in the appropriate languages for each non-English-speaking group other than Spanish that exceeds 10 percent of the state’s population.

(c) For purposes of complying with this section, when bottled water comes from a municipal source, the relevant information from the consumer confidence report or water quality report prepared for that year by the public water system pursuant to Section 116470, may be used.

(d) The bottled water report shall include, but not be limited to, all of the following:

(1) The source of the bottled water, consistent with applicable state and federal regulations.

(2) A brief and plainly worded definition of the terms “statement of quality,” “maximum contaminant level,” “primary drinking water standard,” and “public health goal.”

(3) A brief description of the treatment process.

(4) A reference to the United States Food and Drug Administration Web site that provides product recall information.

(5) The bottled water company’s address and telephone number that enables customers to obtain further information concerning contaminants and potential health effects.

(6) Information on the levels of unregulated substances, if any, for which water bottlers are required to monitor pursuant to state or federal law or regulation.

(7) (A) The following statement:

“Drinking water, including bottled water, may reasonably be expected to contain at least small amounts of some contaminants. The presence of contaminants does not necessarily indicate that water poses a health risk. More information about contaminants and potential health effects can be obtained by calling the United States Food and Drug Administration, Food and Cosmetic Hotline (1-888-723-3366).”

(B) If the telephone number for the United States Food and Drug Administration, Food and Cosmetic Hotline changes, the statement shall be updated to reflect the new telephone number.

(8) The following statement:

“Some persons may be more vulnerable to contaminants in drinking water than the general population. Immuno-compromised persons, including, but not limited to, persons with cancer who are undergoing chemotherapy, persons who have undergone organ transplants, persons with HIV/AIDS or other immune system disorders, some elderly persons, and infants can be particularly at risk from infections. These persons should seek advice about drinking water from their health care providers. The United States Environmental Protection Agency and the Centers for Disease Control and

Prevention guidelines on appropriate means to lessen the risk of infection by cryptosporidium and other microbial contaminants are available from the Safe Drinking Water Hotline (1-800-426-4791).”

(9) The following statement:

“The sources of bottled water include rivers, lakes, streams, ponds, reservoirs, springs, and wells. As water naturally travels over the surface of the land or through the ground, it can pick up naturally occurring substances as well as substances that are present due to animal and human activity.

Substances that may be present in the source water include any of the following:

(1) Inorganic substances, including, but not limited to, salts and metals, that can be naturally occurring or result from farming, urban stormwater runoff, industrial or domestic wastewater discharges, or oil and gas production.

(2) Pesticides and herbicides that may come from a variety of sources, including, but not limited to, agriculture, urban stormwater runoff, and residential uses.

(3) Organic substances that are byproducts of industrial processes and petroleum production and can also come from gas stations, urban stormwater runoff, agricultural application, and septic systems.

(4) Microbial organisms that may come from wildlife, agricultural livestock operations, sewage treatment plants, and septic systems.

(5) Substances with radioactive properties that can be naturally occurring or be the result of oil and gas production and mining activities.”

(10) The following statement:

“In order to ensure that bottled water is safe to drink, the United States Food and Drug Administration and the State Department of Public Health prescribe regulations that limit the amount of certain contaminants in water provided by bottled water companies.”

(11) (A) The following statement, if nitrate (NO₃) levels above 23 ppm but below 45 ppm (the Maximum Contaminant Level for nitrate (NO₃)) are detected:

“Nitrate in drinking water at levels above 45 mg/L is a health risk for infants of less than six months of age. These nitrate levels in drinking water can interfere with the capacity of the infant’s blood to carry oxygen, resulting in a serious illness. Symptoms include shortness of breath and blueness of the skin. Nitrate levels above 45 mg/L may also affect the ability of the blood to carry oxygen in other individuals, including, but not limited to, pregnant women and those with certain specific enzyme deficiencies. If you are caring for an infant, or you are pregnant, you should ask advice from your health care provider.”

(B) If the nitrate disclosure requirements for municipal water suppliers are revised by the State Department of Public Health, this statement shall be updated to reflect the revision.

(12) (A) The following statement, if arsenic levels above 5 ppb, but below 10 ppb (the Maximum Contaminant Level for arsenic), are detected:

“Arsenic levels above 5 ppb and up to 10 ppb are present in your drinking water. While your drinking water meets the current EPA standard for arsenic, it does contain low levels of arsenic. The standard balances the current understanding of arsenic’s possible health effects against the costs of removing arsenic from drinking water. The State Department of Public Health continues to research the health effects of low levels of arsenic, which is a mineral known to cause cancer in humans at high concentrations and is linked to other health effects, including, but not limited to, skin damage and circulatory problems.”

(B) If the arsenic disclosure requirements for municipal water suppliers are revised by the State Department of Public Health, this statement shall be updated to reflect the revision.

(13) A full disclosure of any exemption or variance that have been granted to the bottler by the State Department of Public Health, including an explanation of reasons for each exemption or variance and the date of the exemption or variance.

SEC. 4. Section 111115 of the Health and Safety Code is amended to read:

111115. (a) Each water-vending machine, retail water treatment plant, water hauler vehicle and facility, and private water source shall be maintained in a clean and sanitary condition at all times.

(b) (1) The department shall require that water-vending machines be cleaned, serviced, and sanitized in accordance with the manufacturer's specifications, but at least once every 31 days.

(2) Inspection records shall be kept for every visit made by either the operator or the maintenance personnel pursuant to this subdivision. These records shall show the date and time of the visit, any tests performed, any maintenance performed, and the signature or electronic signature of the operator or maintenance personnel. The records shall be kept by the owner of the water-vending machine for a minimum of two years and shall be made available to the department upon request.

(c) A record of any consumer complaints shall be kept on file with the owner of the water-vending machine for a minimum of two years, and shall be made available to the department upon request.

(d) If the department determines that there is a violation of this article, the department may do either or both of the following:

(1) Embargo the machine pursuant to Section 111860.

(2) Impose a fine, as determined appropriate by the department.

(e) (1) The department shall, annually, conduct inspections of not less than 20 percent of the licensed water-vending machines in the state and shall include both rural and urban counties. The selection of these machines shall be dependent on the state of the machine and the quality of the water source, and any other factors as determined by the department.

(2) The department may perform, within 12 months of the initial violation, one or more reinspections of each water-vending machine or water retailer that is found to be in violation of this section as necessary to prevent repeated or continuing violations. The department shall charge a fee to the owner to cover the costs of

performing the reinspections. The fee shall not exceed the full cost of performing the reinspections up to a maximum of one hundred dollars (\$100) per hour.

(f) Subdivisions (b) to (e), inclusive, shall become operative January 1, 2009.

SEC. 5. Section 111130 of the Health and Safety Code is amended to read:

111130. (a) The department shall charge and collect a fee for each license application submitted in accordance with the fee schedule in Table 1, that shall be an amount reasonably necessary to produce sufficient revenue to enforce this article. The fees collected shall be adjusted annually as required by Section 100425. New applicants for a water bottling plant license shall pay Category 2 fees for the first license year.

(b) The water-bottling plant and bottled water distributor categories shall be determined by dividing by 52 the number of gallons produced or shipped into California during the previous year. If the result is an average of 5,000 gallons or less per week, the firm is Category 1. If the average exceeds 5,000 gallons per week, the firm is Category 2.

Table 1
License Fees

License Class	Annual Fee
Water-Bottling Plant	
Category 1	\$310
Category 2	875
Water-Vending Machine	40
Water Hauler	310
Retail Water Facility	310
Private Water Source Operator	310
Bottled Water Distributor	310

(c) The owners or operators of each water-bottling plant, retail water facility, private water source, each water hauler in California and bottlers or distributors of water bottled out-of-state shall make application for a license on forms provided by the department. Applications and license fees shall be submitted annually. Applicants shall provide to the department, in electronic format,

the serial number of each machine, and the street address, city, ZIP Code, and county where the machine is located.

(d) Each water-vending machine owner or operator shall make application annually for a license for all machines on forms provided by the department. A decal or seal provided by the department indicating a license fee has been paid shall be affixed in a prominent place to each water-vending machine in service. The duty to display the decal or seal shall apply only on and after the decal has been received by the operator.

SEC. 6. Section 111170 of the Health and Safety Code is amended to read:

111170. (a) Labeling and advertising of bottled water and vended water shall conform with this section, Chapter 4 (commencing with Section 110290), and applicable portions of Part 101 of Title 21 of the Code of Federal Regulations.

(b) Each container of bottled water sold in this state, each water-vending machine, and each container provided by retail water facilities located in this state shall be clearly labeled in an easily readable format. Retail water facilities that do not provide labeled containers shall post, in a location readily visible to consumers, a sign conveying required label information.

(c) Water-vending machines, retail water facilities, and private water sources that sell water at retail shall display in a position clearly visible to customers the following information:

- (1) The name and address of the operator.
- (2) The fact that the water is obtained from an approved public water supply or licensed private water source.
- (3) A statement describing the treatment process used.
- (4) If no treatment process is utilized, a statement to that effect.
- (5) A toll-free telephone number or a local telephone number within the area code in which the machine is located that may be called for further information, service, or complaints, and the toll-free telephone number of the department's food and drug branch that may be called for complaints or questions.
- (6) A sign or label indicating the date on which the water-vending machine was last sanitized and serviced by the operator or maintenance personnel as required pursuant to paragraph (1) of subdivision (b) of Section 111115.

(7) A notice to consumers listing the industry's recommendations for the type and condition of container suitable for use with the water-vending machine.

(8) A valid decal or seal received from the department indicating that a license fee has been paid and a license issued for the water-vending machine as set forth in subdivision (d) of Section 111130.

(d) The information required pursuant to subdivision (c) shall be displayed in both English and Spanish.

(e) Bottled water may be labeled "drinking water," notwithstanding the source or characteristics of the water, only if it is processed pursuant to the Food and Drug Administration Good Manufacturing Practices contained in Section 165.110 and Parts 110 and 129 of Title 21 of the Code of Federal Regulations, Sections 12235 to 12285, inclusive, of Title 17 of the California Code of Regulations, and any other requirements established by the department pursuant to Sections 111145, 111150, and 111155. Any vended water and any water from a retail water facility may be labeled "drinking water," notwithstanding the source or characteristics of the water, only if it is processed pursuant to Article 10 (commencing with Section 114200) of Chapter 4 of Part 7 and any other requirements established by the department pursuant to Sections 111145, 111150, and 111155.

(f) Each container of bottled water sold at retail or wholesale in this state in a beverage container shall include on its label, or on an additional label affixed to the bottle, or on a package insert or attachment, all the following:

(1) The name and contact information for the bottler or brand owner.

(2) The source of the bottled water, in compliance with applicable state and federal regulations.

(3) A clear and conspicuous statement that informs consumers about how to access water quality information contained in the bottled water report required by Section 111071.

(A) The statement shall contain all of the following:

(i) It shall include the term "water quality and information" appropriately, while informing customers about methods of gaining access to the full bottled water report.

(ii) It shall provide a telephone number, where information can be requested from the bottled water company and one other means

of contact for the bottled water company, including, but not limited to, a mailing address, e-mail address, or the bottled water company's Web site.

(B) The following statement may be used to fulfill the requirements of this paragraph:

“For more information and to obtain additional consumer information relating to water quality, including a bottled water report, contact [name of bottled water company] at [telephone number or toll-free telephone number] and [at least one of the following: mailing address, e-mail address, or the bottled water company's Web site].”

(g) Bottlers that distribute bottled or vended water directly to consumers shall provide a statement on each billing statement that includes both of the following:

(1) A telephone number and mailing address of the bottler or brand owner.

(2) The means by which a consumer may obtain consumer information relating to water quality, including a bottled water report, as described in Section 111071.

(h) Amendments made to this section by SB 220 of the 2007–08 Regular Session shall only apply to bottled water that was bottled on or after January 1, 2009.

SEC. 7. Section 111198 is added to the Health and Safety Code, to read:

111198. In its annual budget report to the Legislature, the department shall provide, in connection to the entities it regulates under this article, all of the following information:

(a) The total number of licenses, by type and county, issued in the prior calendar year.

(b) The number of inspections performed by the department in the previous calendar year, broken down by county and license type.

(c) The number and type of major violations, and the actions taken to correct those violations.

(d) The number and dollar value of fines levied under subdivision (c).

SEC. 8. Section 6 shall become operative on January 1, 2009.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2007

Governor