

AMENDED IN ASSEMBLY APRIL 1, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 119**

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**Introduced by Committee on Environmental Safety and Toxic  
Materials (Alejo (Chair), Bloom, Lowenthal, Stone, and Ting)**

January 14, 2013

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An act to amend Section 17577.2 of the Business and Professions Code, and to amend Sections 116825, 116840, and 116860 of, to add Sections 116831, 116832, and 116836 to, to repeal Sections 116830 and 116855 of, and to repeal and add Sections 116835, 116845, and 116850 of, the Health and Safety Code, relating to water treatment devices.

LEGISLATIVE COUNSEL'S DIGEST

AB 119, as amended, Committee on Environmental Safety and Toxic Materials. Water treatment devices.

Existing law prohibits a person from making a claim that a water treatment device, as defined, affects the health or safety of drinking water, in connection with the sale or distribution of the device, unless the device has been certified by the State Department of Public Health or another entity, as specified. Existing law requires the department to adopt regulations setting forth the criteria and procedures for certification of water treatment devices that are claimed to affect the health or safety of drinking water.

This bill would instead require each manufacturer that offers for sale in California a water treatment device for which it makes a health or safety claim, as defined, to submit specified information, including the manufacturer's contact information, product identification information, and the specific contaminant claimed to be removed or reduced by the

device, to the department for purposes of inclusion on the department’s Internet Web site. This bill would also require each manufacturer to pay a reasonable regulatory fee to pay for the cost of publishing information on the department’s Internet Web site and for conducting enforcement actions.

This bill would make related and conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

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

1 SECTION 1. Section 17577.2 of the Business and Professions  
2 Code is amended to read:  
3 17577.2. It is unlawful for any person to do any of the following  
4 in connection with the sale, lease, rental, offer to sell, lease, rent,  
5 or other disposition of water treatment devices:  
6 (a) Make any untrue or misleading oral or written statements  
7 regarding the presence of one or more contaminants in water, or  
8 the performance of water treatment devices, including, but not  
9 limited to, the following oral or written statements:  
10 (1) (A) Any contaminant exists in the water of any person to  
11 whom the statement is directed unless the statement is true, is  
12 reasonably based on factual data, and at least a written summary  
13 of the factual data, that has been prepared or approved by the source  
14 of the factual data, is disclosed to the person to whom the statement  
15 is directed before that person executes any contract for the  
16 purchase, lease, or rental of a water treatment device.  
17 (B) Any contaminant may exist in the water of any person to  
18 whom the statement is directed unless the statement is true and is  
19 reasonably based on factual data.  
20 (2) A relationship between water quality and acute or chronic  
21 illness exists as a scientific certainty unless that statement is true.  
22 (3) The public water system, utility, or treatment plant that  
23 supplies water to the person to whom the statement is directed  
24 does not test, treat, or remove particular substances from water  
25 treated by it unless the statement is true.  
26 (4) A water treatment device removes particular contaminants  
27 or other substances from water unless the statement is true, is  
28 reasonably based on factual data in existence at the time the

1 statement is made, and the requirements of subparagraphs (A)  
2 through (C) are satisfied.

3 (A) If the particular contaminants or other substances mentioned  
4 in the statement described in paragraph (4) are not necessarily in  
5 the water of the person to whom the statement is made, the  
6 following disclosure or its equivalent must be clearly and  
7 conspicuously made: “The contaminants or other substances  
8 removed or reduced by this water treatment device are not  
9 necessarily in your water.”

10 (B) If the statement described in paragraph (4) is oral, the  
11 disclosure described in subparagraph (A) shall be made orally and  
12 shall immediately follow the statement. If the statement is in  
13 writing, the disclosure shall be in writing and shall be placed  
14 immediately next to the written statement.

15 (C) Notwithstanding subparagraph (A), no statement about the  
16 ability of a water treatment device to remove particular  
17 contaminants or other substances shall be used to imply falsely  
18 that any of those contaminants or other substances are present in  
19 the water of the person to whom the statement is made.

20 (5) Use news events, reports, or descriptions of water quality  
21 problems or health hazards associated with water systems or  
22 suppliers different from the systems or suppliers of the intended  
23 consumer unless, at the same time, the seller sets forth  
24 conspicuously and prominently a statement, if true, that the seller  
25 has no information that the intended consumer’s water supply has  
26 the water quality problems or health hazards referred to in the news  
27 events, reports, or descriptions.

28 (6) A water treatment device would provide a health benefit or  
29 diminish a health risk unless it would do so.

30 (7) A water treatment device will solve or contribute to the  
31 solution of any problem unless the statement is true.

32 (b) Perform precipitation tests of the individual consumer’s  
33 drinking water without also clearly informing the consumer of the  
34 results, scope, and limits of the test. Precipitation tests may only  
35 be used to demonstrate the hardness or other nonhealth-related  
36 characteristics of the water being tested.

37 (c) Notwithstanding subdivision (a), make product performance  
38 claims or product benefit claims that the device affects the health  
39 or the safety of drinking water, unless the device has been  
40 published on an Internet Web site by the State Department of

1 Public Health pursuant to Article 3 (commencing with Section  
2 116825) of Chapter 5 of Part 12 of Division 104 of the Health and  
3 Safety Code. This subdivision does not apply to the making of  
4 truthful and nonmisleading claims regarding the removal or  
5 reduction of contaminants not associated with a health or safety  
6 claim pursuant to Article 3 (commencing with Section 116825) of  
7 Chapter 5 of Part 12 of Division 104 of the Health and Safety  
8 Code.

9 (d) Use pictures, exhibits, graphs, charts, other graphic  
10 portrayals, endorsements, or testimonials in any untrue or  
11 misleading manner.

12 (e) Fail to disclose clearly and conspicuously, in writing, to the  
13 purchaser, lessee, or renter, prior to the time of purchase, lease, or  
14 rent, the importance of maintaining the water treatment device  
15 according to the manufacturer's instructions, including, if  
16 applicable, replacement of screens and filters. In addition, a  
17 separate printed gummed label, tag, or other convenient form of  
18 reminder of the importance of proper maintenance shall be provided  
19 to the purchaser, lessee, or renter.

20 SEC. 2. Section 116825 of the Health and Safety Code is  
21 amended to read:

22 116825. Unless the context otherwise requires, the following  
23 definitions shall govern construction of this article:

24 (a) "Water treatment device" means any point of use or point  
25 of entry instrument or contrivance sold or offered for rental or  
26 lease for residential use, and designed to be added to the plumbing  
27 system, or used without being connected to the plumbing of a water  
28 supply intended for human consumption in order to improve the  
29 water supply by any means, including, but not limited to, filtration,  
30 distillation, adsorption, ion exchange, reverse osmosis, or other  
31 treatment. "Water treatment device" does not include any device  
32 that is regulated pursuant to Article 12 (commencing with Section  
33 111070) of Chapter 5 of Part 5.

34 (b) "Department" means the State Department of Public Health.

35 (c) "Person" means any individual, firm, corporation, or  
36 association, or any employee or agent thereof.

37 (d) "Contaminants" means any health-related physical, chemical,  
38 biological, or radiological substance or matter in water.

1 (e) “Health or safety claim” means any claim that the water  
2 treatment device will remove or reduce a contaminant for which  
3 either of the following applies:

4 (1) A primary drinking water standard as defined in Section  
5 116275, or a treatment requirement as authorized in subdivision  
6 (j) of Section 116365 and subdivision (d) of Section 116375, has  
7 been established.

8 (2) A national primary drinking water standard or treatment  
9 requirement has been established under the federal Safe Drinking  
10 Water Act (42 U.S.C. Sec. 300g-1).

11 (f) “Manufacturer” means any of the following:

12 (1) A person that makes, converts, constructs, or produces water  
13 treatment devices for the purposes of sale, lease, or rental to  
14 individuals, corporations, associations, or other entities.

15 (2) A person that assembles water treatment devices or treatment  
16 components from components manufactured by another entity.

17 (3) A person that adds its own product name or product  
18 identification to water treatment devices or treatment components  
19 that have been manufactured or assembled by another entity.

20 SEC. 3. Section 116830 of the Health and Safety Code is  
21 repealed.

22 SEC. 4. Section 116831 is added to the Health and Safety Code,  
23 to read:

24 116831. All regulations adopted pursuant to this article prior  
25 to January 1, 2014, are repealed.

26 SEC. 5. Section 116832 is added to the Health and Safety Code,  
27 to read:

28 116832. Commencing January 1, 2014, each manufacturer that  
29 offers for sale in California a water treatment device for which it  
30 makes a health or safety claim shall, for each water treatment  
31 device, submit to the department the following information,  
32 together with the fee prescribed in Section 116850, by March 1 of  
33 each calendar year, for purposes of the department’s publishing  
34 the information on its Internet Web site:

35 (a) The name, address, telephone number, and Internet Web site  
36 address, if any, of the manufacturer.

37 (b) The name, address, and telephone number of a contact person  
38 for the manufacturer.

1 (c) The name and model number of the water treatment device,  
2 and any other product identification used by the manufacturer to  
3 describe the water treatment device or treatment component.

4 (d) Each specific contaminant claimed to be removed or reduced  
5 by the device.

6 (e) For each specific contaminant identified in subdivision (d),  
7 the name of the organization that ~~tested~~ *certified* the device to  
8 verify its removal or reduction performance for that contaminant,  
9 the name of the testing protocol or standard used to test the device,  
10 a statement from the testing laboratory giving the date of the test,  
11 a summary of the results, and the date, if any, by which the device  
12 must be retested for verification of the removal or reduction  
13 performance to remain effective.

14 SEC. 6. Section 116835 of the Health and Safety Code is  
15 repealed.

16 SEC. 7. Section 116835 is added to the Health and Safety Code,  
17 to read:

18 116835. A water treatment device for which a health or safety  
19 claim is made shall not be sold or otherwise distributed unless the  
20 device meets either of the following criteria:

21 (a) The device has a valid certificate issued on or before  
22 December 31, 2013.

23 (b) The device has been ~~tested~~ *certified* by an independent  
24 ~~testing certification~~ organization that has been accredited by the  
25 American National Standards Institute, and test results verify the  
26 health or safety claim, and the device is included on the list of  
27 water treatment devices published on the department's Internet  
28 Web site.

29 SEC. 8. Section 116836 is added to the Health and Safety Code,  
30 to read:

31 116836. (a) Notwithstanding any other law, a certificate issued  
32 by the department shall not be valid unless the application for  
33 certification was filed on or before November 1, 2013.

34 (b) A currently valid certificate issued by the department on or  
35 before December 31, 2013, pursuant to this article, shall remain  
36 in effect for five years following the date of initial issuance, except  
37 that any certification that was renewed on or before January 1,  
38 2014, shall remain valid only for the remaining period of that  
39 certification.

1 SEC. 9. Section 116840 of the Health and Safety Code is  
2 amended to read:

3 116840. (a) The department or any local health officer is  
4 authorized to enforce this article.

5 (b) The department may remove a water treatment device from,  
6 or determine not to include a water treatment device on, the list of  
7 water treatment devices on the department's Internet Web site  
8 upon its determination of any of the following:

9 (1) That the water treatment device was not ~~tested~~ *certified* by  
10 the independent ~~testing~~ *certification* organization that the  
11 manufacturer named in its submission to the department pursuant  
12 to Section 116832.

13 (2) That the manufacturer, or any employee or agent thereof,  
14 has violated this article or Chapter 1 (commencing with Section  
15 17500) of Part 3 of Division 7 of the Business and Professions  
16 Code.

17 (3) That any of the information submitted pursuant to Section  
18 116832 is not true.

19 (4) That a certificate issued by the department prior to December  
20 31, 2013, has expired.

21 (c) Any person, corporation, firm, partnership, joint stock  
22 company, or any other association or organization that violates  
23 any provision of this article shall be liable for a civil penalty not  
24 to exceed five thousand dollars (\$5,000) for each violation. Where  
25 the conduct constituting a violation is of a continuing nature, each  
26 day of the conduct is a separate and distinct violation. The civil  
27 penalty shall be assessed and recovered in a civil action brought  
28 in the name of the people of the State of California by the Attorney  
29 General, or by any district attorney, county counsel, or city attorney  
30 in any court of competent jurisdiction.

31 (d) If the action is brought by the Attorney General, one-half  
32 of the penalty collected shall be paid to the treasurer of the county  
33 in which the judgment was entered, and one-half to the State  
34 Treasurer. If brought by a district attorney or county counsel, the  
35 entire amount of penalties collected shall be paid to the treasurer  
36 of the county in which the judgment was entered. If brought by a  
37 city attorney or city prosecutor, one-half of the penalty shall be  
38 paid to the treasurer of the county and one-half to the city.

1 (e) Unless otherwise provided, the remedies or penalties  
2 provided by this article are cumulative to each other and to  
3 remedies or penalties available under all other laws of this state.

4 SEC. 10. Section 116845 of the Health and Safety Code is  
5 repealed.

6 SEC. 11. Section 116845 is added to the Health and Safety  
7 Code, to read:

8 116845. The department shall publish on its Internet Web site  
9 both of the following:

10 (a) (1) A list of water treatment devices for which a valid  
11 certification was issued by the department on or before December  
12 31, 2013.

13 (2) A list of water treatment devices for which a manufacturer  
14 has submitted information pursuant to Section 116832, except for  
15 those water treatment devices that the department has determined  
16 to remove from, or not include on, the list pursuant to Section  
17 116840.

18 (b) Consumer information, in English and Spanish, regarding  
19 the appropriate use of water treatment devices.

20 SEC. 12. Section 116850 of the Health and Safety Code is  
21 repealed.

22 SEC. 13. Section 116850 is added to the Health and Safety  
23 Code, to read:

24 116850. (a) The department shall charge and collect an annual  
25 fee of up to four thousand dollars (\$4,000) per manufacturer that  
26 submits information as required by Section 116832. The fee shall  
27 not exceed the amount necessary to recoup the reasonable  
28 regulatory costs incurred by the department in publishing and  
29 maintaining the information on its Internet Web site as provided  
30 in Section 116845 and in conducting enforcement actions,  
31 including, but not limited to, referring matters for enforcement to  
32 other agencies pursuant to Section 116840.

33 (b) Notwithstanding any other law, the department may establish  
34 and periodically adjust the fee authorized by subdivision (a) by  
35 publishing the fee on its Internet Web site, and this action by the  
36 department shall not be subject to the rulemaking provisions of  
37 the Administrative Procedure Act (Chapter 3.5 (commencing with  
38 Section 11340) of Part 1 of Division 3 of Title 2 of the Government  
39 Code).



1 SEC. 14. Section 116855 of the Health and Safety Code is  
2 repealed.

3 SEC. 15. Section 116860 of the Health and Safety Code is  
4 amended to read:

5 116860. There is in the State Treasury the Water Device  
6 Certification Special Account. Fees collected pursuant to Section  
7 116850 shall be deposited in the account created by this section.  
8 The money in the account is available for expenditure by the  
9 department, upon appropriation by the Legislature, solely for the  
10 purposes specified in this article.

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