

AMENDED IN ASSEMBLY APRIL 16, 2013

AMENDED IN ASSEMBLY APRIL 1, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 119

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

January 14, 2013

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

1 reasonably based on factual data in existence at the time the
2 statement is made, and the requirements of subparagraphs (A)
3 through (C) are satisfied.

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

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

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

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

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

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

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

38 (c) Notwithstanding subdivision (a), make product performance
39 claims or product benefit claims that the device affects the health
40 or the safety of drinking water, unless the device ~~has been~~

1 ~~published on an Internet Web site by the State Department of~~
2 ~~Public Health pursuant to~~ *complies with* Article 3 (commencing
3 with Section 116825) of Chapter 5 of Part 12 of Division 104 of
4 the Health and Safety Code. This subdivision does not apply to
5 the making of truthful and nonmisleading claims regarding the
6 removal or reduction of contaminants not associated with a health
7 or safety claim pursuant to Article 3 (commencing with Section
8 116825) of Chapter 5 of Part 12 of Division 104 of the Health and
9 Safety Code.

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

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

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

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

25 (a) "Water treatment device" means any point of use or point
26 of entry instrument or contrivance sold or offered for rental or
27 lease for residential use, and designed to be added to the plumbing
28 system, or used without being connected to the plumbing of a water
29 supply intended for human consumption in order to improve the
30 water supply by any means, including, but not limited to, filtration,
31 distillation, adsorption, ion exchange, reverse osmosis, or other
32 treatment. "Water treatment device" does not include any device
33 that is regulated pursuant to Article 12 (commencing with Section
34 111070) of Chapter 5 of Part 5.

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

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

38 (d) "Contaminants" means any health-related physical, chemical,
39 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 certified the device to verify its
8 removal or reduction performance for that contaminant, the name
9 of the testing protocol or standard used to test the device, a
10 statement from the testing laboratory giving the date of the test, a
11 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 certified by an independent certification
24 organization that has been accredited by the American National
25 Standards Institute, and test results verify the health or safety claim,
26 and the device is included on the list of water treatment devices
27 published on the department’s Internet Web site.

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

30 116836. (a) Notwithstanding any other law, a certificate issued
31 by the department shall not be valid unless the application for
32 certification was filed on or before November 1, 2013.

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

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

1 116840. (a) ~~The department~~ *department*, or any local health
2 ~~officer is authorized to~~ *officer with the concurrence of the*
3 ~~department,~~ *shall enforce this article.*

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

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

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

15 (3) That any of the information submitted pursuant to Section
16 116832 is not true.

17 (4) That a certificate issued by the department prior to December
18 31, 2013, has expired.

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

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

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

1 SEC. 10. Section 116845 of the Health and Safety Code is
2 repealed.

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

5 116845. The department shall publish on its Internet Web site
6 ~~both~~ of the following:

7 (a) (1) A list of water treatment devices for which a valid
8 certification was issued by the department on or before December
9 31, 2013.

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

15 (3) *A product worksheet for each water treatment device.*

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

18 SEC. 12. Section 116850 of the Health and Safety Code is
19 repealed.

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

22 116850. (a) The department shall charge and collect an annual
23 fee of up to four thousand dollars (\$4,000) per manufacturer that
24 submits information as required by Section 116832. The fee shall
25 not exceed the amount necessary to recoup the reasonable
26 regulatory costs incurred by the department in publishing and
27 maintaining the information on its Internet Web site as provided
28 in Section 116845 and in conducting enforcement actions,
29 including, but not limited to, referring matters for enforcement to
30 other agencies pursuant to Section 116840.

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

38 SEC. 14. Section 116855 of the Health and Safety Code is
39 repealed.

1 SEC. 15. Section 116860 of the Health and Safety Code is
2 amended to read:
3 116860. There is in the State Treasury the Water Device
4 Certification Special Account. Fees collected pursuant to Section
5 116850 shall be deposited in the account created by this section.
6 The money in the account is available for expenditure by the
7 department, upon appropriation by the Legislature, solely for the
8 purposes specified in this article.

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