

AMENDED IN SENATE JUNE 19, 2013

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~~ *Section* 116830 ~~and 116855~~ of, and to repeal and add Sections 116835, 116845, ~~and 116850~~ *116850, and 116855* 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~~ *revise the criteria and procedure for certification of water treatment devices for which a health or safety*

claim, as defined, is made and would require each manufacturer that offers for sale in California a one of those water treatment device for which it makes a health or safety claim, as defined, devices 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. The bill would require, before July 1, 2015, the exterior packaging of certain water treatment devices to clearly identify the contaminant or contaminants that the device has been certified to remove or reduce, as specified. The bill would also require the manufacturer of certain water treatment devices, before July 1, 2015, to include a specified decal with each water treatment device sold in California.

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.

1 (B) Any contaminant may exist in the water of any person to
2 whom the statement is directed unless the statement is true and is
3 reasonably based on factual data.

4 (2) A relationship between water quality and acute or chronic
5 illness exists as a scientific certainty unless that statement is true.

6 (3) The public water system, utility, or treatment plant that
7 supplies water to the person to whom the statement is directed
8 does not test, treat, or remove particular substances from water
9 treated by it unless the statement is true.

10 (4) A water treatment device removes particular contaminants
11 or other substances from water unless the statement is true, is
12 reasonably based on factual data in existence at the time the
13 statement is made, and the requirements of subparagraphs (A)
14 through (C) are satisfied.

15 (A) If the particular contaminants or other substances mentioned
16 in the statement described in paragraph (4) are not necessarily in
17 the water of the person to whom the statement is made, the
18 following disclosure or its equivalent must be clearly and
19 conspicuously made: “The contaminants or other substances
20 removed or reduced by this water treatment device are not
21 necessarily in your water.”

22 (B) If the statement described in paragraph (4) is oral, the
23 disclosure described in subparagraph (A) shall be made orally and
24 shall immediately follow the statement. If the statement is in
25 writing, the disclosure shall be in writing and shall be placed
26 immediately next to the written statement.

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

32 (5) Use news events, reports, or descriptions of water quality
33 problems or health hazards associated with water systems or
34 suppliers different from the systems or suppliers of the intended
35 consumer unless, at the same time, the seller sets forth
36 conspicuously and prominently a statement, if true, that the seller
37 has no information that the intended consumer’s water supply has
38 the water quality problems or health hazards referred to in the news
39 events, reports, or descriptions.

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

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

5 (b) Perform precipitation tests of the individual consumer's
6 drinking water without also clearly informing the consumer of the
7 results, scope, and limits of the test. Precipitation tests may only
8 be used to demonstrate the hardness or other nonhealth-related
9 characteristics of the water being tested.

10 (c) Notwithstanding subdivision (a), make product performance
11 claims or product benefit claims that the device affects the health
12 or the safety of drinking water, unless the device complies with
13 Article 3 (commencing with Section 116825) of Chapter 5 of Part
14 12 of Division 104 of the Health and Safety Code. This subdivision
15 does not apply to the making of truthful and nonmisleading claims
16 regarding the removal or reduction of contaminants not associated
17 with a health or safety claim pursuant to Article 3 (commencing
18 with Section 116825) of Chapter 5 of Part 12 of Division 104 of
19 the Health and Safety Code.

20 (d) Use pictures, exhibits, graphs, charts, other graphic
21 portrayals, endorsements, or testimonials in any untrue or
22 misleading manner.

23 (e) Fail to disclose clearly and conspicuously, in writing, to the
24 purchaser, lessee, or renter, prior to the time of purchase, lease, or
25 rent, the importance of maintaining the water treatment device
26 according to the manufacturer's instructions, including, if
27 applicable, replacement of screens and filters. In addition, a
28 separate printed gummed label, tag, or other convenient form of
29 reminder of the importance of proper maintenance shall be provided
30 to the purchaser, lessee, or renter.

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

33 116825. Unless the context otherwise requires, the following
34 definitions shall govern construction of this article:

35 (a) "Water treatment device" means any point of use or point
36 of entry instrument or contrivance sold or offered for rental or
37 lease for residential use, and designed to be added to the plumbing
38 system, or used without being connected to the plumbing of a water
39 supply intended for human consumption in order to improve the
40 water supply by any means, including, but not limited to, filtration,

1 distillation, adsorption, ion exchange, reverse osmosis, or other
2 treatment. “Water treatment device” does not include any device
3 that is regulated pursuant to Article 12 (commencing with Section
4 111070) of Chapter 5 of Part 5.

5 (b) “Department” means the State Department of Public Health.

6 (c) “Person” means any individual, firm, corporation, or
7 association, or any employee or agent thereof.

8 (d) “Contaminants” means any health-related physical, chemical,
9 biological, or radiological substance or matter in water.

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

13 (1) A primary drinking water standard as defined in Section
14 116275, or a treatment requirement as authorized in subdivision
15 (j) of Section 116365 and subdivision (d) of Section 116375, has
16 been established.

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

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

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

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

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

29 SEC. 3. Section 116830 of the Health and Safety Code is
30 repealed.

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

33 116831. All regulations adopted pursuant to this article prior
34 to January 1, 2014, are repealed.

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

37 116832. Commencing January 1, 2014, each manufacturer that
38 offers for sale in California a water treatment device for which it
39 makes a health or safety claim shall, for each water treatment
40 device, submit to the department the following information,

1 together with the fee prescribed in Section 116850, by March 1 of
2 each calendar year, for purposes of the department’s publishing
3 the information on its Internet Web site:

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

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

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

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

13 (e) For each specific contaminant identified in subdivision (d),
14 the name of the organization that certified the device to verify its
15 removal or reduction performance for that contaminant, the name
16 of the testing protocol or standard used to test the device, a
17 statement from the testing laboratory giving the date of the test, a
18 summary of the results, and the date, if any, by which the device
19 must be retested for verification of the removal or reduction
20 performance to remain effective.

21 SEC. 6. Section 116835 of the Health and Safety Code is
22 repealed.

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

25 116835. (a) A water treatment device for which a health or
26 safety claim is made shall not be sold or otherwise distributed
27 unless the device meets either of the following criteria:

28 ~~(a)~~

29 (1) The device has a valid certificate issued on or before
30 December 31, 2013.

31 ~~(b)~~

32 (2) The device ~~has~~ *meets all of the following requirements:*

33 (A) *The device has been certified by an independent certification*
34 *organization that has been accredited by the American National*
35 *Standards ~~Institute, and Institute.~~*

36 (B) *The device has been tested and the test results verify the*
37 *health or safety ~~claim, and the claim.~~*

38 (C) *The device is included on the list of water treatment devices*
39 *published on the department’s Internet Web site.*

40

1 (b) Before July 1, 2015, the exterior packaging of a water
2 treatment device for which a health or safety claim is made, and
3 that is offered for sale in a retail establishment in California, shall
4 clearly identify the contaminant or contaminants that the device
5 has been certified pursuant to subdivision (a) to remove or reduce.
6 If a device has been certified to remove or reduce more than five
7 contaminants, at least five contaminants shall be listed on the
8 exterior packaging followed by a statement directing consumers
9 to visit the manufacturer's Internet Web site to obtain information
10 regarding additional contaminants that the device is certified to
11 remove or reduce.

12 (c) Before July 1, 2015, the manufacturer of a water treatment
13 device for which it makes a health or safety claim shall include
14 with each water treatment device sold in California a decal that
15 may be affixed to the device by the consumer that states, at a
16 minimum, the following:

17 "Please refer to the owner's manual for proper maintenance and
18 operation. If this device is not maintained and operated as specified
19 in the owner's manual, there is a risk of exposure to contaminants.
20 For more information, visit the manufacturer's Internet Web site
21 at _____ or the California Department of
22 *Manufacturer's Internet Web Site*
23 *Public Health's Internet Web site at www.cdph.ca.gov.*"
24

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

27 116836. (a) Notwithstanding any other law, a certificate issued
28 by the department shall not be valid unless the application for
29 certification was filed on or before November 1, 2013.

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

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

38 116840. (a) The department, or any local health officer with
39 the concurrence of the department, shall enforce this article.

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

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

8 (2) That the manufacturer, or any employee or agent thereof,
9 has violated this article or Chapter 1 (commencing with Section
10 17500) of Part 3 of Division 7 of the Business and Professions
11 Code.

12 (3) That any of the information submitted pursuant to Section
13 116832 is not true.

14 (4) That a certificate issued by the department prior to December
15 31, 2013, has expired.

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

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

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

37 SEC. 10. Section 116845 of the Health and Safety Code is
38 repealed.

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

1 116845. The department shall publish on its Internet Web site
2 the following:

3 (a) (1) A list of water treatment devices for which a valid
4 certification was issued by the department on or before December
5 31, 2013.

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

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

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

14 SEC. 12. Section 116850 of the Health and Safety Code is
15 repealed.

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

18 116850. (a) The department shall charge and collect an annual
19 fee of up to four thousand dollars (\$4,000) per manufacturer that
20 submits information as required by Section 116832. The fee shall
21 not exceed the amount necessary to recoup the reasonable
22 regulatory costs incurred by the department in publishing and
23 maintaining the information on its Internet Web site as provided
24 in Section 116845 and in conducting enforcement actions,
25 including, but not limited to, referring matters for enforcement to
26 other agencies pursuant to Section 116840.

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

34 SEC. 14. Section 116855 of the Health and Safety Code is
35 repealed.

36 *SEC. 15. Section 116855 is added to the Health and Safety*
37 *Code, to read:*

38 *116855. This article shall not apply to residential*
39 *self-regenerating water softeners, as defined in Section 13148 of*
40 *the Water Code.*

1 ~~SEC. 15.~~

2 *SEC. 16.* Section 116860 of the Health and Safety Code is
3 amended to read:

4 116860. There is in the State Treasury the Water Device
5 Certification Special Account. Fees collected pursuant to Section
6 116850 shall be deposited in the account created by this section.
7 The money in the account is available for expenditure by the
8 department, upon appropriation by the Legislature, solely for the
9 purposes specified in this article.

O