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AMENDED IN SENATE JUNE 19, 2013
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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)**
(Coauthor: Senator Anderson)

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 Section 116830 of, and to repeal and add Sections 116835, 116845, 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 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 one of those water treatment 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~~ *after* 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~~ *after* 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 *has been approved by the State Department of Public Health*
14 *pursuant to Article 3 (commencing with Section 116825) of*
15 *Chapter 5 of Part 12 of Division 104 of the Health and Safety Code*
16 *to make that claim.* This subdivision does not apply to the making
17 of truthful and nonmisleading claims regarding the removal or
18 reduction of contaminants *for which approval is* not associated
19 with a health or safety claim pursuant to Article 3 (commencing
20 with Section 116825) of Chapter 5 of Part 12 of Division 104 of
21 the Health and Safety Code.

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

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

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

35 116825. Unless the context otherwise requires, the following
36 definitions shall govern construction of this article:

37 (a) “Water treatment device” means any point of use or point
38 of entry instrument or contrivance sold or offered for rental or
39 lease for residential use, and designed to be added to the plumbing
40 system, or used without being connected to the plumbing of a water

1 supply intended for human consumption in order to improve the
2 water supply by any means, including, but not limited to, filtration,
3 distillation, adsorption, ion exchange, reverse osmosis, or other
4 treatment. “Water treatment device” does not include any device
5 that is regulated pursuant to Article 12 (commencing with Section
6 111070) of Chapter 5 of Part 5.

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

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

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

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

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

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

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

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

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

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

31 SEC. 3. Section 116830 of the Health and Safety Code is
32 repealed.

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

35 116831. All regulations adopted pursuant to this article prior
36 to January 1, 2014, are repealed.

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

39 116832. Commencing January 1, 2014, each manufacturer that
40 offers for sale in California a water treatment device for which it

1 makes a health or safety claim shall, for each water treatment
2 device, submit to the department the following information,
3 together with the fee prescribed in Section 116850, by ~~March~~
4 *September* 1 of each calendar year, for purposes of the department's
5 publishing the information on its Internet Web site:

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

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

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

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

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

23 SEC. 6. Section 116835 of the Health and Safety Code is
24 repealed.

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

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

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

32 (2) The device 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.

36 (B) The device has been tested and the test results verify the
37 health or safety 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~~ *After* 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~~ *After* July 1, 2015, the manufacturer of a water
13 treatment device for which it makes a health or safety claim shall
14 include with each water treatment device sold in California a decal
15 that 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 valid for five years following the date of initial issuance, except
33 that any certification that was renewed on or before January 1,
34 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)~~
9 (1) That the manufacturer, or any employee or agent thereof,
10 has violated this article or Chapter 1 (commencing with Section
11 17500) of Part 3 of Division 7 of the Business and Professions
12 Code.

13 ~~(3)~~
14 (2) That any of the information submitted pursuant to Section
15 116832 is not true.

16 ~~(4)~~
17 (3) 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 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) The department may establish and periodically adjust the
32 fee authorized by subdivision (a) by publishing the fee on its
33 Internet Web site, and this action by the department shall not be
34 subject to the rulemaking provisions of the Administrative
35 Procedure Act (Chapter 3.5 (commencing with Section 11340) of
36 Part 1 of Division 3 of Title 2 of the Government Code).

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

39 SEC. 15. Section 116855 is added to the Health and Safety
40 Code, to read:

1 116855. This article shall not apply to residential
2 self-regenerating water softeners, as defined in Section 13148 of
3 the Water Code.

4 SEC. 16. Section 116860 of the Health and Safety Code is
5 amended to read:

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

O