

Assembly Bill No. 119

CHAPTER 403

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.

[Approved by Governor September 28, 2013. Filed with
Secretary of State September 28, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

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

Existing law prohibits a person from making a claim in connection with the sale or distribution of a water treatment device, as defined, that the device affects the health or safety of drinking water, 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, the specific contaminant claimed to be removed or reduced by the device, and a product information worksheet, as described, to the department for purposes of inclusion on the department's Internet Web site. The bill would require the department to publish that information on its Internet Web site by April 1, if it received the information between September 2 and March 1, and by October 1, if it received the information between March 2 and September 1. The 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, after July 1, 2015, the exterior packaging of certain water treatment devices to clearly identify the contaminant that the device has been certified to remove or reduce, as specified. The bill would also require the manufacturer of certain water treatment devices, after July 1, 2015, to include a specified decal with each water treatment device offered for sale in California.

This bill would make related and conforming changes.

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

SECTION 1. Section 17577.2 of the Business and Professions Code is amended to read:

17577.2. It is unlawful for any person to do any of the following in connection with the sale, lease, rental, offer to sell, lease, rent, or other disposition of water treatment devices:

(a) Make any untrue or misleading oral or written statements regarding the presence of one or more contaminants in water, or the performance of water treatment devices, including, but not limited to, the following oral or written statements:

(1) (A) Any contaminant exists in the water of any person to whom the statement is directed unless the statement is true, is reasonably based on factual data, and at least a written summary of the factual data, that has been prepared or approved by the source of the factual data, is disclosed to the person to whom the statement is directed before that person executes any contract for the purchase, lease, or rental of a water treatment device.

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

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

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

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

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

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

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

(5) Use news events, reports, or descriptions of water quality problems or health hazards associated with water systems or suppliers different from the systems or suppliers of the intended consumer unless, at the same time,

the seller sets forth conspicuously and prominently a statement, if true, that the seller has no information that the intended consumer's water supply has the water quality problems or health hazards referred to in the news events, reports, or descriptions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 4. Section 116831 is added to the Health and Safety Code, to read: 116831. All regulations adopted pursuant to this article prior to January 1, 2014, are repealed.

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

116832. (a) Commencing January 1, 2014, each manufacturer that offers for sale in California a water treatment device for which it makes a health or safety claim shall, for each water treatment device for which the manufacturer does not have a valid, unexpired certificate issued by the department prior to December 1, 2013, annually submit to the department the following information, together with the fee prescribed in Section 116850, for purposes of the department publishing the information on its Internet Web site:

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

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

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

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

(5) For each specific contaminant identified pursuant to paragraph (4), the name of the organization that meets the accreditation standards of the American National Standards Institute and that has certified the device to verify its removal or reduction performance for that contaminant, the name of the testing protocol or standard used to test the device, a statement from

the testing laboratory giving the date of the test, a summary of the results, and the date, if any, by which the device must be retested for verification of the removal or reduction performance to remain effective.

(6) A product information worksheet that includes the following information:

(A) A summary of the information required to be submitted to the department pursuant to paragraphs (1) to (5), inclusive.

(B) A copy of the certificate issued by the organization that certified the device, as described in paragraph (5).

(C) The service flow rate in gallons per minute or gallons per day or the production rate in gallons per day.

(D) The rated service life of the water treatment device, if applicable.

(E) The general use conditions and needs of the device, including, but not limited to, its maximum turbidity and the bacteriological quality of source water.

(F) The model or part number of components that must be periodically or routinely replaced to maintain the effectiveness of the device.

(G) The maximum and minimum operating temperature of the device in degrees Fahrenheit and degrees Centigrade.

(H) The maximum and minimum operating pressure of the device in pounds per square inch and kilograms per square centimeter.

(I) A reference to the device's owners' manual for general operation and maintenance requirements and the manufacturer's warranty.

(b) (1) Information submitted to the department pursuant to subdivision (a) that is accompanied by the fee required by Section 116850 and postmarked, or sent electronically, after September 1, but on or before March 1, shall be published by the department pursuant to Section 116845 no later than April 1 next following the submission.

(2) Information submitted to the department pursuant to subdivision (a) that is accompanied by the fee required by Section 116850 and postmarked, or sent electronically, after March 1, but on or before September 1, shall be published by the department pursuant to Section 116845 no later than October 1 of that same year.

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

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

116835. (a) A water treatment device for which a health or safety claim is made shall not be sold or otherwise distributed unless the device is included on the list of water treatment devices published on the department's Internet Web site pursuant to Section 116845 and has been certified by an independent certified organization that has been accredited by the American National Standards Institute.

(b) After July 1, 2015, the exterior packaging of a water treatment device for which a health or safety claim is made, and that is offered for sale in a retail establishment in California, shall clearly identify the contaminant or contaminants that the device has been certified pursuant to subdivision (a) to remove or reduce. If a device has been certified to remove or reduce more than five contaminants, at least five contaminants shall be listed on the

exterior packaging followed by a statement directing consumers to visit the manufacturer's Internet Web site to obtain information regarding additional contaminants that the device is certified to remove or reduce.

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

"Please refer to the owner's manual for proper maintenance and operation. If this device is not maintained and operated as specified in the owner's manual, there is a risk of exposure to contaminants. For more information, visit the manufacturer's Internet Web site at _____

_____ or the California Department of Public Health's Internet Web site at Site

www.cdph.ca.gov."

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

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

(b) A currently valid certificate issued by the department on or before December 31, 2013, pursuant to this article, shall remain valid for five years following the date of initial issuance, provided that the manufacturer pays the annual fee established by Section 116850.

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

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

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

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

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

(3) That a certificate issued by the department prior to December 31, 2013, has expired, unless the manufacturer otherwise complies with Section 116832.

(4) That the manufacturer has not paid the annual fees required by Section 116850.

(5) That the manufacturer has failed to submit all of the information required by subdivision (a) of Section 116832.

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

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

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

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

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

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

(a) (1) A list of water treatment devices for which a valid certification was issued by the department on or before December 31, 2013, except for those water treatment devices that the department has removed from, or determined not to include on, the list of water treatment devices on its Internet Web site.

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

(3) A product worksheet for each water treatment device listed on the department's Internet Web site.

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

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

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

116850. (a) The department shall charge and collect the applicable annual fee, as established pursuant to subdivision (b), from each manufacturer that submits information as required by Section 116832 and from each manufacturer that has a currently valid certificate issued by the department. The fees established pursuant to subdivision (b) shall not exceed the amount necessary to recoup the reasonable regulatory costs incurred by the department in publishing and maintaining the information on its Internet

Web site as provided in Section 116845 and in conducting enforcement actions, including, but not limited to, referring matters for enforcement to other agencies pursuant to Section 116840.

(b) (1) For each water treatment device for which the manufacturer has submitted the information required by subdivision (a) of Section 116832, the annual fee shall be up to five hundred dollars (\$500).

(2) For each water treatment device that has a valid, unexpired certificate issued by the department prior to December 31, 2013, the annual fee shall be up to five hundred dollars (\$500).

(c) The department may establish and periodically adjust the fee authorized by subdivision (a) by publishing the fee on its Internet Web site. This action by the department shall not be subject to the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

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

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

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

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

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