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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 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, ~~and 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. ~~This~~ *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.

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:

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

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

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

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

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

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

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

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

39 (5) Use news events, reports, or descriptions of water quality
40 problems or health hazards associated with water systems or

1 suppliers different from the systems or suppliers of the intended
2 consumer unless, at the same time, the seller sets forth
3 conspicuously and prominently a statement, if true, that the seller
4 has no information that the intended consumer’s water supply has
5 the water quality problems or health hazards referred to in the news
6 events, reports, or descriptions.

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

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

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

16 (c) Notwithstanding subdivision (a), make product performance
17 claims or product benefit claims that the device affects the health
18 or the safety of drinking water, unless the device ~~has been approved~~
19 ~~by the State Department of Public Health pursuant to~~ *complies*
20 *with* Article 3 (commencing with Section 116825) of Chapter 5
21 of Part 12 of Division 104 of the Health and Safety ~~Code to make~~
22 ~~that claim.~~ *Code*. This subdivision does not apply to the making
23 of truthful and nonmisleading claims regarding the removal or
24 reduction of contaminants ~~for which approval is~~ not associated
25 with a health or safety claim pursuant to Article 3 (commencing
26 with Section 116825) of Chapter 5 of Part 12 of Division 104 of
27 the Health and Safety Code.

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

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

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

1 116825. Unless the context otherwise requires, the following
2 definitions shall govern construction of this article:

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

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

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

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

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

21 (1) A primary drinking water standard as defined in Section
22 116275, or a treatment requirement as authorized in subdivision
23 (j) of Section 116365 and subdivision (d) of Section 116375, has
24 been established.

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

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

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

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

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

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

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

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

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

5 116832. (a) Commencing January 1, 2014, each manufacturer
6 that offers for sale in California a water treatment device for which
7 it makes a health or safety claim shall, for each water treatment
8 ~~device,~~ *device for which the manufacturer does not have a valid,*
9 *unexpired certificate issued by the department prior to December*
10 *1, 2013, annually* submit to the department the following
11 information, together with the fee prescribed in Section 116850,
12 ~~by March 1 of each calendar year,~~ for purposes of the department's
13 *department* publishing the information on its Internet Web site:

14 (a)

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

17 (b)

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

20 (c)

21 (3) The name and model number of the water treatment device,
22 and any other product identification, ~~including, but not limited to,~~
23 ~~the product worksheet,~~ used by the manufacturer to describe the
24 water treatment device or treatment component.

25 (d)

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

28 (e)

29 (5) For each specific contaminant identified ~~in subdivision (d),~~
30 *pursuant to paragraph (4),* the name of the organization that
31 certified the device to verify its removal or reduction performance
32 for that contaminant, the name of the testing protocol or standard
33 used to test the device, a statement from the testing laboratory
34 giving the date of the test, a summary of the results, and the date,
35 if any, by which the device must be retested for verification of the
36 removal or reduction performance to remain effective.

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

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

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

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

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

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

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

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

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

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

20 (b) (1) Information submitted to the department pursuant to
21 subdivision (a) that is accompanied by the fee required by Section
22 116850 and postmarked, or sent electronically, after September
23 1, but on or before March 1, shall be published by the department
24 pursuant to Section 116845 no later than April 1 next following
25 the submission.

26 (2) Information submitted to the department pursuant to
27 subdivision (a) that is accompanied by the fee required by Section
28 116850 and postmarked, or sent electronically, after March 1, but
29 on or before September 1, shall be published by the department
30 pursuant to Section 116845 no later than October 1 of that same
31 year.

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

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

36 116835. (a) A water treatment device for which a health or
37 safety claim is made shall not be sold or otherwise distributed
38 unless the device ~~meets either of the following criteria:~~ is included
39 on the list of water treatment devices published on the department's
40 Internet Web site pursuant to Section 116845.

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

3 ~~(2) The device meets all of the following requirements:~~

4 ~~(A) The device has been certified by an independent certification~~
5 ~~organization that has been accredited by the American National~~
6 ~~Standards Institute.~~

7 ~~(B) The device has been tested and the test results verify the~~
8 ~~health or safety claim.~~

9 ~~(C) The device is included on the list of water treatment devices~~
10 ~~published on the department’s Internet Web site.~~

11 (b) After July 1, 2015, the exterior packaging of a water
12 treatment device for which a health or safety claim is made, and
13 that is offered for sale in a retail establishment in California, shall
14 clearly identify the contaminant or contaminants that the device
15 has been certified pursuant to subdivision (a) to remove or reduce.
16 If a device has been certified to remove or reduce more than five
17 contaminants, at least five contaminants shall be listed on the
18 exterior packaging followed by a statement directing consumers
19 to visit the manufacturer’s Internet Web site to obtain information
20 regarding additional contaminants that the device is certified to
21 remove or reduce.

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

27
28 “Please refer to the owner’s manual for proper maintenance and
29 operation. If this device is not maintained and operated as specified
30 in the owner’s manual, there is a risk of exposure to contaminants.
31 For more information, visit the manufacturer’s Internet Web site
32 at _____ or the California Department of
33 Manufacturer’s Internet Web Site
34 Public Health’s Internet Web site at www.cdph.ca.gov.”

35
36 SEC. 8. Section 116836 is added to the Health and Safety Code,
37 to read:

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

4 (b) A currently valid certificate issued by the department on or
5 before December 31, 2013, pursuant to this article, shall remain
6 valid for five years following the date of initial issuance, ~~except~~
7 ~~that any certification that was renewed on or before January 1,~~
8 ~~2014, shall remain valid only for the remaining period of that~~
9 ~~certification.~~ *provided that the manufacturer pays the annual fee*
10 *established by Section 116850.*

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

13 116840. (a) The department, or any local health officer with
14 the concurrence of the department, shall enforce this article.

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

19 (1) That the manufacturer, or any employee or agent thereof,
20 has violated this article or Chapter 1 (commencing with Section
21 17500) of Part 3 of Division 7 of the Business and Professions
22 Code.

23 (2) That any of the information submitted pursuant to Section
24 116832 is not true.

25 (3) That a certificate issued by the department prior to December
26 31, 2013, has ~~expired.~~ *expired, unless the manufacturer otherwise*
27 *complies with Section 116832.*

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

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

32 (c) Any person, corporation, firm, partnership, joint stock
33 company, or any other association or organization that violates
34 any provision of this article shall be liable for a civil penalty not
35 to exceed five thousand dollars (\$5,000) for each violation. Where
36 the conduct constituting a violation is of a continuing nature, each
37 day of the conduct is a separate and distinct violation. The civil
38 penalty shall be assessed and recovered in a civil action brought
39 in the name of the people of the State of California by the Attorney

1 General, or by any district attorney, county counsel, or city attorney
2 in any court of competent jurisdiction.

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

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

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

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

18 116845. The department shall publish semiannually on its
19 Internet Web site the following:

20 (a) (1) A list of water treatment devices for which a valid
21 certification was issued by the department on or before December
22 31, ~~2013~~ 2013, *except for those water treatment devices that the*
23 *department has removed from, or determined not to include on,*
24 *the list of water treatment devices on its Internet Web site.*

25 (2) A list of water treatment devices for which a manufacturer
26 has submitted information pursuant to Section 116832, except for
27 those water treatment devices that the department has determined
28 to remove from, or not include on, the list pursuant to Section
29 116840.

30 (3) A product worksheet for each water treatment ~~device, which~~
31 ~~shall, at a minimum, include the information specified in~~
32 ~~subdivisions (a) to (c), inclusive, of Section 116832.~~ *device listed*
33 *in the department's Internet Web site.*

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

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

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

1 116850. (a) The department shall charge and collect ~~an annual~~
2 ~~fee of up to four thousand dollars (\$4,000) per the applicable~~
3 ~~annual fee, as established pursuant to subdivision (b), from each~~
4 manufacturer that submits information as required by Section
5 ~~116832. 116832 and from each manufacturer that has a currently~~
6 ~~valid certificate issued by the department. The fee fees established~~
7 ~~pursuant to subdivision (b) shall not exceed the amount necessary~~
8 to recoup the reasonable regulatory costs incurred by the
9 department in publishing and maintaining the information on its
10 Internet Web site as provided in Section 116845 and in conducting
11 enforcement actions, including, but not limited to, referring matters
12 for enforcement to other agencies pursuant to Section 116840.

13 (b) (1) For each water treatment device for which the
14 manufacturer has submitted the information required by
15 subdivision (a) of Section 116832, the annual fee shall be up to
16 three hundred thirty-two dollars (\$332).

17 (2) For each water treatment device that has a valid, unexpired
18 certificate issued by the department prior to December 31, 2013,
19 the annual fee shall be up to four hundred dollars (\$400).

20 ~~(b)~~

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

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

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

31 116855. This article shall not apply to residential
32 self-regenerating water softeners, as defined in Section 13148 of
33 the Water Code.

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

36 116860. There is in the State Treasury the Water Device
37 Certification Special Account. Fees collected pursuant to Section
38 116850 shall be deposited in the account created by this section.
39 The money in the account is available for expenditure by the

- 1 department, upon appropriation by the Legislature, solely for the
- 2 purposes specified in this article.

O