

**ASSEMBLY BILL**

**No. 119**

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

January 14, 2013

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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 introduced, 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  
28 reasonably based on factual data in existence at the time the  
29 statement is made, and the requirements of subparagraphs (A)  
30 through (C) are satisfied.

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

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

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

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

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

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

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

35 (c) Notwithstanding subdivision (a), make product performance  
36 claims or product benefit claims that the device affects *the* health  
37 or the safety of drinking water, unless the device has been ~~certified~~  
38 *published on an Internet Web site* by the State Department of  
39 ~~Health Services~~ *Public Health* pursuant to Article 3 (commencing  
40 with Section 116825) of Chapter 5 of Part 12 of Division 104 of

1 the Health and Safety Code. This subdivision does not apply to  
 2 the making of truthful and nonmisleading claims regarding the  
 3 removal or reduction of contaminants ~~for which certification is~~  
 4 ~~not available~~ *not associated with a health or safety claim* pursuant  
 5 to Article 3 (commencing with Section 116825) of Chapter 5 of  
 6 Part 12 of Division 104 of the Health and Safety Code.

7 ~~This subdivision shall become operative one year after the~~  
 8 ~~effective date of the regulations adopted pursuant to Section~~  
 9 ~~116830 of the Health and 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 Health Services*  
 36 *Public Health*.

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

39 (d) “Contaminants” means any health-related physical, chemical,  
 40 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 ~~116830. (a) The department shall adopt regulations setting~~  
23 ~~forth the criteria and procedures for certification of water treatment~~  
24 ~~devices that are claimed to affect the health or safety of drinking~~  
25 ~~water. The regulations shall include appropriate testing protocols~~  
26 ~~and procedures to determine the performance of water treatment~~  
27 ~~devices in reducing specific contaminants from public or private~~  
28 ~~domestic water supplies. The regulations may adopt, by reference,~~  
29 ~~the testing procedures and standards of one or more independent~~  
30 ~~testing organizations if the department determines that the~~  
31 ~~procedures and standards are adequate to meet the requirements~~  
32 ~~of this section. The regulations may specify any testing~~  
33 ~~organization that the department has designated to conduct the~~  
34 ~~testing of water treatment devices.~~

35 ~~(b) The regulations required by subdivision (a) shall include~~  
36 ~~minimum standards for the following:~~

37 ~~(1) Performance requirements.~~

38 ~~(2) Types of tests to be performed.~~

39 ~~(3) Types of allowable materials.~~

40 ~~(4) Design and construction.~~

1 ~~(5) Instruction and information requirements, including~~  
2 ~~operational, maintenance, replacement, and estimated cost of these~~  
3 ~~items.~~

4 ~~(6) Any additional requirements, not inconsistent with this~~  
5 ~~article, as may be necessary to carry out this article.~~

6 ~~(e) The department or any testing organization designated by~~  
7 ~~the department pursuant to this section may agree to evaluate test~~  
8 ~~data on a water treatment device offered by the manufacturer of~~  
9 ~~the water treatment device, in lieu of the requirements of this~~  
10 ~~section, if the department or the testing organization determines~~  
11 ~~that the testing procedures and standards used to develop the data~~  
12 ~~are adequate to meet the requirements of this section.~~

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

15 116831. All regulations adopted pursuant to this article prior  
16 to January 1, 2014, are repealed.

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

19 116832. Commencing January 1, 2014, each manufacturer that  
20 offers for sale in California a water treatment device for which it  
21 makes a health or safety claim shall, for each water treatment  
22 device, submit to the department the following information,  
23 together with the fee prescribed in Section 116850, by March 1 of  
24 each calendar year, for purposes of the department's publishing  
25 the information on its Internet Web site:

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

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

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

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

35 (e) For each specific contaminant identified in subdivision (d),  
36 the name of the organization that tested the device to verify its  
37 removal or reduction performance for that contaminant, the name  
38 of the testing protocol or standard used to test the device, a  
39 statement from the testing laboratory giving the date of the test, a  
40 summary of the results, and the date, if any, by which the device

1 must be retested for verification of the removal or reduction  
2 performance to remain effective.

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

5 ~~116835. (a) No water treatment device that makes product  
6 performance claims or product benefit claims that the device affects  
7 health or the safety of drinking water, shall be sold or otherwise  
8 distributed that has not been certified by the department or by  
9 another entity in accordance with subdivision (b). Water treatment  
10 devices not offered for sale or distribution based on claims of  
11 improvement in the healthfulness of drinking water need not be  
12 certified pursuant to this section.~~

13 ~~(b) The department may accept a water treatment device  
14 certification issued by an agency of another state, by an  
15 independent testing organization, or by the federal government in  
16 lieu of its own, if the department determines that certification  
17 program meets the requirements of this article.~~

18 ~~(c) A water treatment device initially installed prior to the  
19 operative date of this section shall not require certification pursuant  
20 to Section 116830.~~

21 ~~(d) Subdivisions (a), (b), and (c) shall become operative one  
22 year after the effective date of the regulations adopted pursuant to  
23 Section 116830. Regulations adopted pursuant to that section shall  
24 be transmitted to the Legislature upon adoption.~~

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

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

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

32 (b) The device has been tested by an independent testing  
33 organization that has been accredited by the American National  
34 Standards Institute, and test results verify the health or safety claim,  
35 and the device is included on the list of water treatment devices  
36 published on the department's Internet Web site.

37 SEC. 8. Section 116836 is added to the Health and Safety Code,  
38 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 in effect 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.

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

12 116840. (a) The department, or any local health officer ~~with~~  
13 ~~the concurrence of the department, shall~~ *is authorized to* enforce  
14 this article.

15 (b) The department may ~~suspend, revoke, or deny a certificate~~  
16 ~~upon its determination~~ *remove a water treatment device from, or*  
17 *determine not to include a water treatment device on, the list of*  
18 *water treatment devices on the department’s Internet Web site*  
19 *upon its determination of either any of the following:*

20 (1) That the water treatment device ~~does not perform in~~  
21 ~~accordance with the claims made under the standard~~ *was not tested*  
22 *by the independent testing organization that the manufacturer*  
23 *named in its submission to the department pursuant to Section*  
24 *116832.*

25 (2) That the manufacturer, or any employee or agent thereof,  
26 has violated this article, ~~any regulation adopted pursuant to this~~  
27 ~~article,~~ or Chapter 1 (commencing with Section 17500) of Part 3  
28 of Division 7 of the Business and Professions Code.

29 (3) *That any of the information submitted pursuant to Section*  
30 *116832 is not true.*

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

33 (c) Any person, corporation, firm, partnership, joint stock  
34 company, or any other association or organization that violates  
35 any provision of this article shall be liable for a civil penalty not  
36 to exceed five thousand dollars (\$5,000) for each violation. Where  
37 the conduct constituting a violation is of a continuing nature, each  
38 day of the conduct is a separate and distinct violation. The civil  
39 penalty shall be assessed and recovered in a civil action brought  
40 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 ~~116845. The department shall publish a list of water treatment  
17 devices certified under this article, including the specific standard  
18 under which the device is certified.~~

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

21 116845. The department shall publish on its Internet Web site  
22 both of the following:

23 (a) (1) A list of water treatment devices for which a valid  
24 certification was issued by the department on or before December  
25 31, 2013.

26 (2) A list of water treatment devices for which a manufacturer  
27 has submitted information pursuant to Section 116832, except for  
28 those water treatment devices that the department has determined  
29 to remove from, or not include on, the list pursuant to Section  
30 116840.

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

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

35 ~~116850. The department shall charge and collect a fee for each  
36 certificate applied for which shall be an amount reasonably  
37 necessary to produce sufficient revenue to effectively implement  
38 this article.~~

39 SEC. 13. Section 116850 is added to the Health and Safety  
40 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 manufacturer that  
 3 submits information as required by Section 116832. The fee shall  
 4 not exceed the amount necessary to recoup the reasonable  
 5 regulatory costs incurred by the department in publishing and  
 6 maintaining the information on its Internet Web site as provided  
 7 in Section 116845 and in conducting enforcement actions,  
 8 including, but not limited to, referring matters for enforcement to  
 9 other agencies pursuant to Section 116840.

10 (b) Notwithstanding any other law, the department may establish  
 11 and periodically adjust the fee authorized by subdivision (a) by  
 12 publishing the fee on its Internet Web site, and this action by the  
 13 department shall not be subject to the rulemaking provisions of  
 14 the Administrative Procedure Act (Chapter 3.5 (commencing with  
 15 Section 11340) of Part 1 of Division 3 of Title 2 of the Government  
 16 Code).

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

19 ~~116855. In developing regulations pursuant to this article, the~~  
 20 ~~department shall seek the consultation of representatives from the~~  
 21 ~~industry regulated under the article, from drinking water purveyors,~~  
 22 ~~and from persons with expertise and experience in promoting~~  
 23 ~~public health.~~

24 SEC. 15. Section 116860 of the Health and Safety Code is  
 25 amended to read:

26 116860. There is in the State Treasury the Water Device  
 27 Certification Special Account. Fees collected pursuant to Section  
 28 116850 shall be deposited in the account created by this section.  
 29 *The money in the account is available for expenditure by the*  
 30 *department, upon appropriation by the Legislature, solely for the*  
 31 *purposes specified in this article.*