

3642

2009-2010 Regular Sessions

I N   A S S E M B L Y

January 27, 2009

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Introduced by M. of A. PHEFFER, DINOWITZ, JAFFEE -- Multi-Sponsored by  
-- M. of A. BENJAMIN, BOYLAND, CLARK, COLTON, CYMBROWITZ, DIAZ,  
GREENE, HOOPER, JACOBS, MARKEY, MAYERSOHN, ORTIZ, J. RIVERA,  
P. RIVERA, SWEENEY, TOWNS, WEISENBERG -- read once and referred to the  
Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to labelling  
bottled water sold or offered for sale

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-  
BLY, DO ENACT AS FOLLOWS:

1     Section 1. The general business law is amended by adding a new article  
2     22-C to read as follows:

3                             ARTICLE 22-C

4                             LABELLING BOTTLED WATER

5                             SOLD OR OFFERED FOR SALE

6     SECTION 350-J. DEFINITIONS.

7             350-K. BOTTLED WATER SOLD IN STATE TO BE LABELED.

8             350-L. BOTTLED WATER REPORT.

9             350-M. RULES AND REGULATIONS.

10            350-N. ENFORCEMENT BY ATTORNEY GENERAL.

11     S 350-J. DEFINITIONS. WHEN USED IN THE ARTICLE, THE FOLLOWING TERMS  
12     SHALL HAVE THE FOLLOWING MEANING ASCRIBED TO THEM:

13         1. "DEPARTMENT" SHALL MEAN THE DEPARTMENT OF HEALTH.

14         2. "COMMISSIONER" SHALL MEAN THE COMMISSIONER OF HEALTH.

15         3. "MAXIMUM CONTAMINANT LEVEL" SHALL MEAN THE MAXIMUM PERMISSIBLE  
16     LEVEL OF PHYSICAL, CHEMICAL, RADIOLOGICAL OR MICROBIOLOGICAL SUBSTANCE  
17     IN WATER.

18     S 350-K. BOTTLED WATER SOLD IN STATE TO BE LABELED. 1. IN ADDITION TO  
19     ANY REQUIREMENTS IMPOSED UNDER SECTION TWO HUNDRED TWENTY-FIVE OF THE  
20     PUBLIC HEALTH LAW AND ANY REGULATIONS PROMULGATED PURSUANT TO SUCH  
21     SECTION, ON OR AFTER JANUARY FIRST, TWO THOUSAND ELEVEN, NO PERSON SHALL  
22     SELL AT RETAIL OR WHOLESALE, OFFER FOR SALE AT RETAIL OR WHOLESALE OR

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 DELIVER BOTTLED WATER FOR HUMAN CONSUMPTION, FOOD PREPARATION OR CULI-  
2 NARY PURPOSES IN THIS STATE IN A BEVERAGE CONTAINER UNLESS SUCH CONTAIN-  
3 ER INCLUDES ON ITS LABEL, OR ON AN ADDITIONAL LABEL AFFIXED TO THE  
4 BOTTLE, OR ON A PACKAGE INSERT OR ATTACHMENT, ALL THE FOLLOWING IN LEGI-  
5 BLE TYPE:

6 A. THE NAME AND CONTACT INFORMATION FOR THE BOTTLER OR BRAND OWNER;

7 B. THE SOURCE OF THE BOTTLED WATER, IN COMPLIANCE WITH APPLICABLE  
8 STATE AND FEDERAL REGULATIONS; AND

9 C. A CLEAR AND CONSPICUOUS STATEMENT THAT INFORMS CONSUMERS ABOUT HOW  
10 TO ACCESS WATER QUALITY INFORMATION CONTAINED IN THE BOTTLED WATER  
11 REPORT REQUIRED BY SECTION THREE HUNDRED FIFTY-L OF THIS ARTICLE.

12 2. THE STATEMENT REQUIRED BY PARAGRAPH C OF SUBDIVISION ONE OF THIS  
13 SECTION SHALL INFORM CUSTOMERS ABOUT METHODS OF GAINING ACCESS TO THE  
14 FULL BOTTLED WATER REPORT AND INCLUDE A TELEPHONE NUMBER, WHERE INFORMA-  
15 TION CAN BE REQUESTED FROM THE BOTTLED WATER COMPANY AND ONE OTHER MEANS  
16 OF CONTACT FOR THE BOTTLED WATER COMPANY, INCLUDING, BUT NOT LIMITED TO,  
17 A MAILING ADDRESS, ELECTRONIC MAIL ADDRESS, OR THE BOTTLED WATER COMPA-  
18 NY'S INTERNET WEB SITE. THE FOLLOWING STATEMENT MAY BE USED TO FULFILL  
19 THE REQUIREMENTS OF THIS PARAGRAPH:

20 "FOR MORE INFORMATION AND TO OBTAIN ADDITIONAL CONSUMER INFORMATION  
21 RELATING TO WATER QUALITY, INCLUDING A BOTTLED WATER REPORT, CONTACT  
22 (NAME OF BOTTLED WATER COMPANY) AT (TELEPHONE NUMBER OR TOLL-FREE TELE-  
23 PHONE NUMBER) AND (AT LEAST ONE OF THE FOLLOWING: MAILING ADDRESS,  
24 E-MAIL ADDRESS, OR THE BOTTLED WATER COMPANY'S INTERNET WEB SITE)."

25 S 350-L. BOTTLED WATER REPORT. 1. ON OR AFTER JANUARY FIRST, TWO THOU-  
26 SAND ELEVEN, AS A CONDITION OF CERTIFICATION BY THE DEPARTMENT PURSUANT  
27 TO SECTION TWO HUNDRED TWENTY-FIVE OF THE PUBLIC HEALTH LAW, PURVEYORS  
28 OF BOTTLED WATER SHALL ANNUALLY PREPARE A BOTTLED WATER REPORT AND  
29 SHALL, UPON REQUEST, MAKE SUCH REPORT AVAILABLE TO CONSUMERS. SUCH ANNU-  
30 AL REPORT SHALL BE PREPARED IN ENGLISH AND SPANISH.

31 2. FOR PURPOSES OF COMPLYING WITH THIS SECTION, WHEN BOTTLED WATER  
32 COMES FROM A MUNICIPAL SOURCE, THE RELEVANT INFORMATION FROM THE ANNUAL  
33 WATER SUPPLY STATEMENT PREPARED FOR THAT YEAR BY THE PUBLIC WATER SYSTEM  
34 PURSUANT TO SECTION ELEVEN HUNDRED FIFTY-ONE OR ELEVEN HUNDRED FIFTY-TWO  
35 OF THE PUBLIC HEALTH LAW, MAY BE USED.

36 3. THE BOTTLED WATER REPORT SHALL INCLUDE SUCH INFORMATION AS IS  
37 REQUIRED IN THIS SECTION AS WELL AS ANY ADDITIONAL INFORMATION REQUIRED  
38 BY THE COMMISSIONER. ADDITIONALLY, THE STATEMENT SHALL PROVIDE A  
39 SECTION WHICH EXPLAINS, IN PLAIN LANGUAGE, THE INFORMATION REQUIRED IN  
40 THE STATEMENT, INCLUDING BRIEF AND PLAINLY WORDED DEFINITIONS OF ANY  
41 TERMS THE COMMISSIONER DETERMINES TO BE APPROPRIATE FOR CARRYING OUT THE  
42 PURPOSES OF THIS ARTICLE. THE DEPARTMENT MAY PREPARE OR PRESCRIBE A  
43 FORMAT OR MODEL UPON WHICH ALL SUCH REPORTS SHALL BE PRODUCED. THE ANNU-  
44 AL BOTTLED WATER REPORT SHALL INCLUDE, BUT NOT BE LIMITED TO, THE  
45 FOLLOWING ITEMS OF INFORMATION:

46 A. A BRIEF DESCRIPTION OF THE SOURCE OR SOURCES OF THE WATER AND THE  
47 GENERAL QUALITATIVE AND QUANTITATIVE CONDITION OF THE WATER SOURCE,  
48 CONSISTENT WITH APPLICABLE STATE AND FEDERAL REGULATIONS;

49 B. THE ANALYTICAL TESTING RESULTS FOR THOSE CONSTITUENTS REQUIRED TO  
50 BE TESTED FOR UNDER PART FIVE OF THE STATE SANITARY CODE OR AS REQUIRED  
51 BY APPROPRIATE LOCAL HEALTH UNITS, EXCEPT FOR MICROBIOLOGICAL RESULTS,  
52 FOR EACH SOURCE OF WATER. WHERE MORE THAN ONE ANALYSIS PER YEAR IS  
53 CONDUCTED ON A SPECIFIC CONSTITUENT, THE BOTTLED WATER COMPANY SHALL  
54 LIST THE RANGE OF RESULTS FROM HIGHEST TO LOWEST DURING THE REPORTING  
55 PERIOD. THE APPLICABLE STATE GUIDELINE, STANDARD, OR MAXIMUM CONTAMINANT  
56 LEVEL FOR EACH CONSTITUENT PRESENT SHALL BE LISTED AND ANY INSTANCE

1 WHERE A STATE GUIDELINE, STANDARD, OR MAXIMUM CONTAMINANT LEVEL IS  
2 VIOLATED SHALL BE NOTED. FOR MICROBIOLOGICAL ANALYSES AS REQUIRED BY  
3 PART FIVE OF THE STATE SANITARY CODE, THE BOTTLED WATER COMPANY SHALL  
4 INDICATE ANY INSTANCE WHERE THE WATER SUPPLY VIOLATED THE MAXIMUM  
5 CONTAMINANT LEVEL. THE DATE OR DATES OF VIOLATION, THE LOCATION WHERE  
6 THE VIOLATION OCCURRED, AND THE RESPONSE OF THE BOTTLED WATER COMPANY  
7 SHALL BE LISTED;

8 C. A BRIEF DESCRIPTION OF THE TYPES OF TREATMENT THAT THE WATER  
9 RECEIVES BEFORE BEING BOTTLED;

10 D. A STATEMENT INDICATING WHETHER THE WATER CONTAINS FLUORIDE. IF THE  
11 WATER CONTAINS FLUORIDE SUCH STATEMENT SHALL INDICATE THE AVERAGE AMOUNT  
12 PRESENT IN A BOTTLE;

13 E. A DESCRIPTION OF THE RISKS ASSOCIATED WITH EXPOSURE TO CRYPTOSPORI-  
14 DIUM PARVUM OR GIARDIA LAMBLIA FOR SPECIFIC AT-RISK POPULATIONS AND THE  
15 GENERAL PUBLIC AND MEASURES THAT AT-RISK POPULATIONS CAN TAKE TO PROTECT  
16 THEMSELVES ACCORDING TO RECOMMENDATIONS BY THE DEPARTMENT OR OTHER  
17 GOVERNMENTAL PUBLIC HEALTH OR ENVIRONMENTAL AGENCIES. IN ADDITION, FOR  
18 WATER WORKS CORPORATIONS THAT TEST FOR CRYPTOSPORIDIUM PARVUM OR GIARDIA  
19 LAMBLIA, A SUMMARY OF THE FOLLOWING: SAMPLING SITES; NUMBER OF TESTS PER  
20 YEAR; TESTING RESULTS AND ACTIONS TAKEN IN RESPONSE TO THOSE RESULTS.  
21 THE COMMISSIONER MAY ADD SUCH ADDITIONAL REQUIREMENTS AS HE OR SHE  
22 DETERMINES TO BE APPROPRIATE;

23 F. A REFERENCE TO THE UNITED STATES FOOD AND DRUG ADMINISTRATION  
24 INTERNET WEB SITE THAT PROVIDES PRODUCT RECALL INFORMATION;

25 G. THE BOTTLED WATER COMPANY'S ADDRESS AND TELEPHONE NUMBER THAT  
26 ENABLES CUSTOMERS TO OBTAIN FURTHER INFORMATION CONCERNING CONTAMINANTS  
27 AND POTENTIAL HEALTH EFFECTS;

28 H. INFORMATION ON THE LEVELS OF UNREGULATED SUBSTANCES, IF ANY, FOR  
29 WHICH PURVEYORS OF BOTTLED WATER ARE REQUIRED TO MONITOR PURSUANT TO  
30 STATE OR FEDERAL LAW OR REGULATION; AND

31 I. A FULL DISCLOSURE OF ANY EXEMPTION OR VARIANCE THAT HAS BEEN GRANT-  
32 ED TO THE BOTTLER BY THE DEPARTMENT, INCLUDING AN EXPLANATION OF REASONS  
33 FOR EACH EXEMPTION OR VARIANCE AND THE DATE OF THE EXEMPTION OR VARI-  
34 ANCE.

35 S 350-M. RULES AND REGULATIONS. THE COMMISSIONER IS HEREBY AUTHORIZED  
36 AND DIRECTED TO PROMULGATE SUCH RULES AND REGULATIONS NECESSARY AND  
37 PROPER TO EFFECTUATE THE PURPOSES OF THIS ARTICLE.

38 S 350-N. ENFORCEMENT BY ATTORNEY GENERAL. WHENEVER THERE SHALL BE A  
39 VIOLATION OF THIS ARTICLE, APPLICATION MAY BE MADE BY THE ATTORNEY  
40 GENERAL IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK TO A COURT OR  
41 JUSTICE HAVING JURISDICTION BY A SPECIAL PROCEEDING TO ISSUE AN INJUNC-  
42 TION, AND UPON NOTICE TO THE DEFENDANT OF NOT LESS THAN FIVE DAYS, TO  
43 ENJOIN AND RESTRAIN THE CONTINUANCE OF SUCH VIOLATION; AND IF IT SHALL  
44 APPEAR TO THE SATISFACTION OF THE COURT OR JUSTICE THAT THE DEFENDANT  
45 HAS, IN FACT, VIOLATED THIS ARTICLE, AN INJUNCTION MAY BE ISSUED BY SUCH  
46 COURT OR JUSTICE, ENJOINING AND RESTRAINING ANY FURTHER VIOLATION, WITH-  
47 OUT REQUIRING PROOF THAT ANY PERSON HAS, IN FACT, BEEN INJURED OR  
48 DAMAGED THEREBY. IN CONNECTION WITH ANY SUCH PROPOSED APPLICATION, THE  
49 ATTORNEY GENERAL IS AUTHORIZED TO TAKE PROOF AND MAKE A DETERMINATION OF  
50 THE RELEVANT FACTS AND TO ISSUE SUBPOENAS IN ACCORDANCE WITH THE CIVIL  
51 PRACTICE LAW AND RULES. WHENEVER THE COURT SHALL DETERMINE THAT A  
52 VIOLATION OF THIS ARTICLE HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL  
53 PENALTY OF NOT MORE THAN ONE THOUSAND DOLLARS FOR A SINGLE VIOLATION AND  
54 NOT MORE THAN ONE HUNDRED THOUSAND DOLLARS FOR MULTIPLE VIOLATIONS  
55 RESULTING FROM A SINGLE ACT OR INCIDENT. THE SECOND VIOLATION AND ANY  
56 VIOLATION COMMITTED THEREAFTER SHALL BE PUNISHABLE BY A CIVIL PENALTY OF

1 NOT MORE THAN FIVE THOUSAND DOLLARS FOR A SINGLE VIOLATION AND NOT MORE  
2 THAN TWO HUNDRED FIFTY THOUSAND DOLLARS FOR MULTIPLE VIOLATIONS RESULT-  
3 ING FROM A SINGLE ACT OR INCIDENT. NO PERSON, FIRM, PARTNERSHIP, ASSOCI-  
4 ATION OR CORPORATION SHALL BE DEEMED TO HAVE VIOLATED THE PROVISIONS OF  
5 THIS ARTICLE IF SUCH PERSON, FIRM, PARTNERSHIP, ASSOCIATION OR CORPO-  
6 RATION SHOWS, BY A PREPONDERANCE OF THE EVIDENCE, THAT THE VIOLATION WAS  
7 NOT INTENTIONAL AND RESULTED FROM A BONA FIDE ERROR MADE NOTWITHSTANDING  
8 THE MAINTENANCE OF PROCEDURES REASONABLY ADOPTED TO AVOID SUCH ERROR.

9 S 2. For the purposes of informing and educating persons engaged in  
10 the sale, offering for sale or delivery of bottled water, the department  
11 of health is authorized to issue warnings for the violation of article  
12 22-C of the general business law, as added by section one of this act,  
13 during the period commencing January 1, 2011 and ending May 1, 2011.

14 S 3. This act shall take effect immediately.