S T A T E O F N E W Y O R K

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2009-2010 Regular Sessions

I N A S S E M B L Y

March 20, 2009

Introduced by M. of A. JAFFEE, CALHOUN, McDONOUGH, CASTRO, SCHIMEL, LIFTON, SWEENEY, BRODSKY, ENGLEBRIGHT, LANCMAN, ZEBROWSKI, LUPARDO, KAVANAGH, KOON, EDDINGTON -- Multi-Sponsored by -- M. of A. GALEF, JOHN, MAGEE, MOLINARO, SKARTADOS, THIELE -- read once and referred to the Committee on Health

AN ACT to amend the public health law and the real property law, in relation to enacting the "well water education act"

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

Section 1. Short title. This act shall be known and may be cited as the "well water education act".

S 2. Section 206 of the public health law is amended by adding a new subdivision 26 to read as follows:

26. THE COMMISSIONER IS AUTHORIZED AND DIRECTED TO ESTABLISH AND MAINTAIN A PUBLIC EDUCATION PROGRAM TO INFORM THE PUBLIC AND APPROPRIATE PROFESSIONAL DISCIPLINES OF THE POTENTIAL HEALTH EFFECTS OF CONSUMING WATER THAT DOES NOT MEET STATE DRINKING WATER STANDARDS. AS PART OF THIS EDUCATION PROGRAM, THE DEPARTMENT SHALL PREPARE MATERIALS TO EDUCATE CONSUMERS WHO OBTAIN DRINKING WATER FROM PRIVATE WELLS ON THE IMPORTANCE OF REGULARLY TESTING FOR CONTAMINATION.

(A) SUCH EDUCATIONAL MATERIALS SHALL INCLUDE, BUT NOT BE LIMITED TO:

(I) INFORMATION ON POTENTIAL CONTAMINANTS INCLUDING: COLIFORM BACTERIA, CHLORIDES, SODIUM, ARSENIC, NITRATES, IRON, MANGANESE, LEAD, PH, VOLATILE ORGANIC COMPOUNDS FOR WHICH MAXIMUM CONTAMINANT LEVELS HAVE BEEN ESTABLISHED PURSUANT TO PUBLIC HEALTH REGULATIONS, VINYL CHLORIDE, MTBE, AND RADON;

(II) AN EXPLANATION THAT CONTAMINATION OF GROUNDWATER CAN OCCUR FROM MIGRATION OF CONTAMINANTS THAT MAY NOT YET HAVE BEEN IDENTIFIED. FURTHER, IT SHOULD BE EMPHASIZED THAT CONTAMINATED WATER DOES NOT NECESSARILY RESULT IN OBVIOUS ODORS OR COLOR CHANGES IN DRINKING WATER AND

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

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THAT THE ONLY WAY TO ENSURE THAT WATER MEETS STATE DRINKING WATER STANDARDS IS TO HAVE IT TESTED BY A STATE CERTIFIED LABORATORY;

(III) INFORMATION ON THE MAXIMUM CONTAMINANT LEVELS, OR PUBLIC HEALTH STANDARDS, FOR THOSE CONTAMINANTS IDENTIFIED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH AND THE POTENTIAL HEALTH IMPACTS OF EXPOSURE TO SUCH CONTAMINANTS ABOVE SUCH LEVELS;

(IV) A RECOMMENDATION THAT ANY WATER TEST CONDUCTED SHOULD BE CONDUCTED BY A LABORATORY CERTIFIED BY THE DEPARTMENT TO TEST FOR DRINKING WATER CONTAMINANTS;

(V) INFORMATION ON THE IMPORTANCE OF TESTING PRIVATE WELLS REGULARLY FOR CONTAMINANTS, AND A REQUEST THAT RESIDENTS PROVIDE THEIR LOCAL HEALTH DEPARTMENT WITH ANY RESULTS OF TESTS THAT EXCEED STATE STANDARDS; AND

(VI) INFORMATION ON WATER TREATMENT TECHNIQUES AND EQUIPMENT.

(B) (I) THE DEPARTMENT SHALL MAKE SUCH EDUCATIONAL MATERIALS AVAILABLE TO THE PUBLIC ON THEIR WEBSITE AND UPON REQUEST TO THE GENERAL PUBLIC.

(II) THE DEPARTMENT, IN CONSULTATION WITH THE DEPARTMENT OF STATE, SHALL REQUIRE THAT:

(A) LICENSED HOME INSPECTORS, AS DEFINED IN SECTION FOUR HUNDRED FORTY-FOUR-B OF THE REAL PROPERTY LAW, ARE PROVIDED WITH SUCH MATERIALS, WHICH SHALL BE PROVIDED BY THE LICENSED HOME INSPECTOR TO EACH CLIENT WHOSE PROPERTY OR POTENTIAL PROPERTY IS SERVED BY A PRIVATE WELL THAT IS THE POTABLE WATER SUPPLY FOR SUCH PROPERTY; AND

(B) LICENSED REAL ESTATE SALESMAN, REAL ESTATE BROKERS OR ASSOCIATE REAL ESTATE BROKERS, AS DEFINED IN SECTION FOUR HUNDRED FORTY OF THE REAL PROPERTY LAW, PROVIDE SUCH INFORMATION TO THEIR CLIENTS WHOSE PROPERTY OR POTENTIAL PROPERTY IS SERVED BY A PRIVATE WELL THAT IS THE POTABLE WATER SUPPLY FOR SUCH PROPERTY, AT THE TIME SUCH CLIENTS ENTER INTO A CONTRACT FOR THE SALE OF SUCH PROPERTY.

S 3. Section 444-g of the real property law is amended by adding a new subdivision 3-a to read as follows:

3-A. EVERY HOME INSPECTOR SHALL PROVIDE TO EACH CLIENT, WHO MAY BE AN OWNER, PROSPECTIVE BUYER OR OTHER INTERESTED INDIVIDUAL, WHOSE RESIDENCE OR POTENTIAL RESIDENCE IS SERVED BY A PRIVATE WELL THAT IS THE POTABLE WATER SUPPLY FOR SUCH PROPERTY, EDUCATIONAL MATERIALS PREPARED BY THE DEPARTMENT OF HEALTH PURSUANT TO SUBDIVISION TWENTY-SIX OF SECTION TWO HUNDRED SIX OF THE PUBLIC HEALTH LAW RELATING TO THE REGULAR TESTING OF THE QUALITY OF DRINKING WATER FROM WELLS.

S 4. Section 466 of the real property law, as added by chapter 456 of the laws of 2001, is amended to read as follows:

S 466. Duty of an agent. 1. An agent representing a seller of residential real property as a listing broker shall have the duty to timely inform each seller represented by that agent of the seller's obligations under this article. An agent representing a buyer of residential real property, or, if the buyer is not represented by an agent, the agent representing a seller of residential real property and dealing with a prospective buyer, shall have the duty to timely (in any event, before the buyer signs a binding contract of sale) inform such buyer of the buyer's rights and obligations under this article[. If an agent performs the duties and obligations imposed upon him or her pursuant to this section, the agent shall have no further duties under this article and shall not be liable to any party for a violation of this article.]; AND

2. AN AGENT REPRESENTING A BUYER OR SELLER OF RESIDENTIAL REAL PROPERTY AS A LISTING BROKER SHALL HAVE THE DUTY TO PROVIDE A PURCHASER OF REAL PROPERTY THAT IS SERVED BY A PRIVATE WELL WHICH IS THE POTABLE WATER SUPPLY FOR SUCH PROPERTY WITH PUBLIC EDUCATION INFORMATION CREATED

BY THE DEPARTMENT OF HEALTH UNDER SUBDIVISION TWENTY-SIX OF SECTION TWO HUNDRED SIX OF THE PUBLIC HEALTH LAW RELATED TO REGULAR TESTING OF THE QUALITY OF DRINKING WATER FROM SUCH WELLS, AT THE TIME SUCH PURCHASER ENTERS INTO A CONTRACT FOR THE SALE OF SUCH PROPERTY.

3. IF AN AGENT PERFORMS THE DUTIES AND OBLIGATIONS IMPOSED UPON HIM OR HER BY SUBDIVISIONS ONE AND TWO OF THIS SECTION, THE AGENT SHALL HAVE NO FURTHER DUTIES UNDER THIS ARTICLE AND SHALL NOT BE LIABLE TO ANY PARTY FOR A VIOLATION OF THIS ARTICLE.

S 5. This act shall take effect on the one hundred eightieth day after it shall have become a law.