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I N S E N A T E

March 29, 2010

Introduced by Sen. PERALTA -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer 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 ASSEMBLY, 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
23 DELIVER BOTTLED WATER FOR HUMAN CONSUMPTION, FOOD PREPARATION OR CULI-
24 NARY PURPOSES IN THIS STATE IN A BEVERAGE CONTAINER UNLESS SUCH CONTAIN-
25 ER INCLUDES ON ITS LABEL, OR ON AN ADDITIONAL LABEL AFFIXED TO THE
26 BOTTLE, OR ON A PACKAGE INSERT OR ATTACHMENT, ALL THE FOLLOWING IN LEGI-
27 BLE TYPE:

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

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

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

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

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

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

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

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

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

40 A. A BRIEF DESCRIPTION OF THE SOURCE OR SOURCES OF THE WATER AND THE
41 GENERAL QUALITATIVE AND QUANTITATIVE CONDITION OF THE WATER SOURCE,
42 CONSISTENT WITH APPLICABLE STATE AND FEDERAL REGULATIONS;

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

1 THE VIOLATION OCCURRED, AND THE RESPONSE OF THE BOTTLED WATER COMPANY
2 SHALL BE LISTED;

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

5 D. A STATEMENT INDICATING WHETHER THE WATER CONTAINS FLUORIDE. IF THE
6 WATER CONTAINS FLUORIDE SUCH STATEMENT SHALL INDICATE THE AVERAGE AMOUNT
7 PRESENT IN A BOTTLE;

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

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

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

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

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

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

33 S 350-N. ENFORCEMENT BY ATTORNEY GENERAL. WHENEVER THERE SHALL BE A
34 VIOLATION OF THIS ARTICLE, APPLICATION MAY BE MADE BY THE ATTORNEY
35 GENERAL IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK TO A COURT OR
36 JUSTICE HAVING JURISDICTION BY A SPECIAL PROCEEDING TO ISSUE AN INJUNC-
37 TION, AND UPON NOTICE TO THE DEFENDANT OF NOT LESS THAN FIVE DAYS, TO
38 ENJOIN AND RESTRAIN THE CONTINUANCE OF SUCH VIOLATION; AND IF IT SHALL
39 APPEAR TO THE SATISFACTION OF THE COURT OR JUSTICE THAT THE DEFENDANT
40 HAS, IN FACT, VIOLATED THIS ARTICLE, AN INJUNCTION MAY BE ISSUED BY SUCH
41 COURT OR JUSTICE, ENJOINING AND RESTRAINING ANY FURTHER VIOLATION, WITH-
42 OUT REQUIRING PROOF THAT ANY PERSON HAS, IN FACT, BEEN INJURED OR
43 DAMAGED THEREBY. IN CONNECTION WITH ANY SUCH PROPOSED APPLICATION, THE
44 ATTORNEY GENERAL IS AUTHORIZED TO TAKE PROOF AND MAKE A DETERMINATION OF
45 THE RELEVANT FACTS AND TO ISSUE SUBPOENAS IN ACCORDANCE WITH THE CIVIL
46 PRACTICE LAW AND RULES. WHENEVER THE COURT SHALL DETERMINE THAT A
47 VIOLATION OF THIS ARTICLE HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL
48 PENALTY OF NOT MORE THAN ONE THOUSAND DOLLARS FOR A SINGLE VIOLATION AND
49 NOT MORE THAN ONE HUNDRED THOUSAND DOLLARS FOR MULTIPLE VIOLATIONS
50 RESULTING FROM A SINGLE ACT OR INCIDENT. THE SECOND VIOLATION AND ANY
51 VIOLATION COMMITTED THEREAFTER SHALL BE PUNISHABLE BY A CIVIL PENALTY OF
52 NOT MORE THAN FIVE THOUSAND DOLLARS FOR A SINGLE VIOLATION AND NOT MORE
53 THAN TWO HUNDRED FIFTY THOUSAND DOLLARS FOR MULTIPLE VIOLATIONS RESULT-
54 ING FROM A SINGLE ACT OR INCIDENT. NO PERSON, FIRM, PARTNERSHIP, ASSOCI-
55 ATION OR CORPORATION SHALL BE DEEMED TO HAVE VIOLATED THE PROVISIONS OF
56 THIS ARTICLE IF SUCH PERSON, FIRM, PARTNERSHIP, ASSOCIATION OR CORPO-

1 RATION SHOWS, BY A PREPONDERANCE OF THE EVIDENCE, THAT THE VIOLATION WAS
2 NOT INTENTIONAL AND RESULTED FROM A BONA FIDE ERROR MADE NOTWITHSTANDING
3 THE MAINTENANCE OF PROCEDURES REASONABLY ADOPTED TO AVOID SUCH ERROR.

4 S 2. For the purposes of informing and educating persons engaged in
5 the sale, offering for sale or delivery of bottled water, the department
6 of health is authorized to issue warnings for the violation of article
7 22-C of the general business law, as added by section one of this act,
8 during the period commencing January 1, 2011 and ending May 1, 2011.

9 S 3. This act shall take effect immediately.